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UNDER THE PRESENT BANKRUPTCY ACT A CLAIM FOUNDED UPON THE INDORSEMENT OF A PROMISSORY NOTE CAN NOT BE PROVED AGAINST BANKRUPT'S ESTATE.

The former Bankruptcy Act (Act of 1867, Sec. 19, U. S. Rev. Sat., Sec. 5068–9) contained provisions expressly regulating cases where the bankrupt is "bound as a drawer, indorser, surety or guarantor," and where his liability shall not have become absolute until after the adjudication, etc., authorizing the creditor in such cases "to prove same after such liability shall have become 'fixed' and before the final dividend shall have become declared."

The existing bankrupt act contains no provision of this kind, nor anything similar. It is manifest that in the absence of any such provision a claim of such character may not be availed of against the estate. This fact, however, does not prevent its remaining in full force against the bankrupt.

While it is manifest that item 1 of Sec. 63*a* of the present act refers to the same character of liabilities as the above section from the former act quoted, the provision in place of it is entirely different. Under the present law the liability must be fixed upon an "instrument in writing," and "absolutely owing at the time of the filing of the petition," whether then payable or not. Cases of promissory notes and bills of exchange are manifestly covered by the act. As to cases of makers and acceptors of such "instruments in writing," the liability is "fixed and absolute" at the time of inception, though the instrument may not be payable till years after. "In the case of an indorser or drawer upon a dishonored instrument of that kind, the liability is said to be 'fixed' and 'absolutely owing.'" These changes in the present law from the old law are ones which most frequently give lawyers trouble, because decisions having been rendered upon the old law are frequently misleading though they have no authority whatever as to the present law.

The filing of a petition in bankrupty is, in legal effect, the equivalent of an attachment or injunction as to all the bankrupt's property. It is notice to the world, and any one dealing therewith after petition filed does so at the risk of having whatever title he may acquire therein divested in favor of the trustee by a subsequent adjudication. As was said by the Supreme Court of the United States in the case of Mueller v. Nugent, 184 U. S. 1, 15: "It is as true of the present law as it was of that of 1867, that the filing of the petition is a *caveat* to all the world, and in effect an attachment and injunction. Bank v. Sherman, 101 U. S, 403. And on adjudication, title to the bankrupt's property becomes vested in the trustees (Secs. 70, 21*e*), with actual or constructive possession, and placed in the custody of the bankruptcy court." See also Glidden v. Mass. Ins. Co. (Mass.), 73 N. E. Rep. 539; *In re* Gutman, 114 Fed. Rep. 1010.

The liability of an indorser of a promissory note, or the drawer of a bill of exchange, is purely contingent, not fixed nor absolute until after presentation to the maker or acceptor and dishonored. This was the holding of the court in U. S. Bank v. Smith, 11 Wheat. 171; Ray v. Smith, 17 Wall. 411; Bond v. Bragg, 17 Ill. 69, and Conklin v. Gandell, 1 Keys (N. Y.), 228. And as such liability is not a "debt" or "fixed liability absolutely owing at the time of the filing of the petition," a claim founded thereon cannot be proven, and consequently cannot be set off against a claim in favor of the trustee. *In re* Edson, 119 Fed. Rep. 487; Bankruptcy Act, Sec. 63*a* (*Id.* Sec. 68*b*), and it has been definitely decided by numerous decisions that no claim may be set off that is not provable under the bankruptcy act, and that no debt is provable arising after bankruptcy, though originating in a contract made before. Bankruptcy Act, Sec. 68*b*; *In re* Bingham, 94 Fed. Rep. 796. See also *In re* Garlington, 115 Fed. Rep. 999; *In re* Coburn, 126 Fed. Rep. 219. The bankruptcy forms 31 and 32, for "Proof of Debt," recite that the bankrupt was, at and before the filing of petition, and still is, indebted to deponent, etc. Salem v. Neosho, 127 Mo. 627; New York Life Ins. Co. v. Universal Co., 88 N. Y. 424, and numerous other cases. The claim must be a subsisting "debt" (Bankruptcy Act, Sec. 63*a*), and it is certain that the mere contingent liability of an indorser

before dishonor is not a debt. Wentworth v. Whittemore, 1 Mass. 471; People v. Arjuello, 37 Cal. 524; Lockhart v. Van Alstyne, 31 Mich. 76; Conley v. Hunds Estate, 53 Vt. 524.

NOTES OF IMPORTANT DECISIONS.

DECEDENTS—ADMINISTRATION OF ESTATES OF ABSENT PERSONS.—One of the interesting and difficult questions of the law is the determination of the equities between an administrator appointed for a person who is so long absent himself from his usual place of abode as to occasion a presumption of his death, and that person himself, on his reappearance after the administration of his estate is settled and his property parceled out among his next of kin. It is difficult to judge who stands in the more equitable light or who is entitled to the greatest sympathy, the supposed dead man or the person who has parceled and parted with his estate under orders of court. It might well be argued against the right of the dead man to recover against his administrator, that it was his misfortune or negligence which occasioned the difficulty, and that therefore he should alone suffer under a well-know maxim in equity. On the other hand, even a Rip Van Winkle who has negligently slept many years of his life away among the lotus leaves and flowers of some far-off Southland does not relish the experience of seeing all the accumulations of his younger life distributed among persons who have given no consideration for it, and as against such distributees he certainly has an equitable right to recover any properties which such distributees have received from his estate.

But there is another phase of this question. Has a court, even through an administrator duly appointed, the right to take another man's property and distribute it into the hands of other persons without giving him a hearing? It would seem that such action would be clearly antagonistic to the federal constitution, and that even a state could not authorize such a mode of procedure. And so it has been held in the case of Scott v. McNeal, 154 U. S. 34, where it was held that the state of Washington had no power to authorize administration of the estate of a living person under any circumstances, and that such administration was void.

In the recent case Cunnius v. Reading School District, however, 25 Sup. Ct. Rep. 721, it is held that provisional administration upon the estate of an absentee, on the theory that he is probably dead, but making provision for the protection of his rights if he subsequently appear, is not repugnant to the fourteenth amendment of the federal constitution and may be valid. This is somewhat of a restriction on the decision in the case of Scott v. McNeal, but the court in the principal case distinguishes its position from that taken in the former case in the following language: "The error underlying the argument of the plaintiff in error consists in treating as one two distinct things—the want of power in a state to administer the property of a person who is alive, under its general authority to provide for the settlement of the estates of deceased persons, and the power of the state to provide for the administration of the estates of persons who are absent for an unreasonable time, and to enact reasonable regulations on that subject. The distinction between the two is well illustrated in Pennsylvania, for in that state, prior to the enactment of the statute in question, it had been expressly decided that a court of probate, as such, was absolutely wanting in jurisdiction to administer the estate of a person who was alive, simply because there existed a presumption which was rebuttable as to the fact of death. This is also aptly illustrated by the law of Louisiana. In that state, as we have seen, provisions have existed from the beginning for the administration of the estates of absentees as distinct from the power conferred upon the courts of probate to administer the estates of deceased persons. In this condition of the law, under an averment of death, an estate was opened in a probate court of Louisiana, and administered upon. A question as to the validity of that administration subsequently arose in Burns v. Van Loan, 29 La. Ann. 560, 563. As the proceedings were probate proceedings not taken under the statute providing for the administration of the estates of absentees, the Supreme Court of the State of Louisiana declared them to be absolutely void. As it cannot be denied that, in substance, the Pennsylvanta statute is a special proceeding for the administration of the estates of absentees, distinct from the general law of that state providing for the settlement of the estates of deceased persons, and as, by the express terms of the statute, jurisdiction was conferred upon the proper court to grant the administration, it follows that the Supreme Court of Pennsylvania did not deprive the plaintiff in error of due process of law within the intendment of the fourteenth amendment."

THE MEASURE OF DAMAGES IN CONVERSIONS BY STOCK BROKERS.—The ease with which the English system of common law can be molded to meet the exigencies of modern business is aptly illustrated in the evolution of the rule of damages in conversion, where the subject of the conversion, is liable to rapid fluctuation in value, as is the case with stocks or bonds in the hands of a broker. Out of a conflict which seemed for the time utterly hopeless, the courts have gradually produced a rule which is now being rapidly seized upon as affording a just and safe criterion. This is stated with extreme lucidity in the twin cases of Federal Stock & Grain Co. v. Wiggins, 77 Conn. 507, and Ling v. Malcom, 77 Conn. 517. Both cases arose out of an unauthorized conver-

sion of stocks in the hands of a broker, and the rule was there given as follows: "The correct measure of the plaintiff's damage was, therefore, the excess, if any, over the price realized (at the sale on June 10th) of the lowest sum for which he could have placed the stocks after notice of the sale, had he given an order to that effect with reasonable promptness; or, in case of fluctuations of market price between the wrongful sale and the latest day to which it would have been reasonable to defer a repurchase, the difference, if any, between the price obtained when the shares were converted and the highest market price, in excess thereof, attained during that period."

Three rules for the computation of damages in cases of this character have been adopted by the various courts. In a few states it is held that the value of the stock at the time of the conversion should furnish the standard of measurement. Freeman v. Harwood, 49 Me. 195; Baltimore Ins. Co. v. Dalrymple, 25 Md. 269; Brylan v. Huguet, 8 Nev. 345. It is obvious, however, that this rule leaves the customer at the mercy of his broker, and the rule has received but limited indorsement.

The first rule to be adopted by influential courts was that damages for the conversion of stock should be computed upon the basis of the highest price intermediate the conversion and the time of trial. This rule originated in, and is still followed by, the English courts. Cud v. Rutts, 1 P. Wms. 572; Harrison v. Harrison, 1 C. & P. 412, 11 E. C. L. 436; Owen v. Routh, 14 C. B. 372. When cases involving the point arose in the United States the tendency was to follow the English cases. Romaine v. Allen, 26 N. Y. 309; West v. Pritchard, 19 Conn. 212. But the rule was found to be inequitable in many cases, as it practically allowed the party bringing suit to delay his action, and thus increase in many instances the amount of his damages. The rule continues, however, to be followed in a few states. Sturgis v. Keith, 57 Ill. 451; Parsons v. Martin, 11 Gray (Mass.), 111; Neiler v. Kelley, 69 Pa. St. 403, 408. In the latter state it has been limited to those cases where a relation of trust exists between the parties, and, where a transfer of stock was permitted by a bank on a forged power of attorney, there being no breach of trust, the value at the time of the conversion was accepted as a criterion. *In re* Jamison & Co.'s Est., 163 Pa. St. 143; Ins. Co. v. Phila., etc., R. R. Co., 153 Pa. St. 160. In some states the English rule has been adopted by statute, but the courts have required the complainant to proceed without unreasonable delay, and where this was not done, have estimated upon the basis of the value at the time of conversion. Fargo First Nat. Bk. v. Minn. Elevator Co., 8 N. Dak. 430.

The case of Romaine v. Allen, *supra*, opened the eyes of the New York courts to the dangers of the English rule. In that case the trial was a protracted one before a referee, and the stock, which was worth $3,937.50 at the time of conversion, rose to $8,175 during the course of the trial. This was allowed by the referee as damages. When the subject came again before the court of appeals in Baker v. Drake, 53 N. Y. 211, 217, the decision in Romaine v. Allen was reversed, and the now prevailing rule adopted. This was subsequently reaffirmed in Wright v. Bank of Metropolis, 110 N. Y. 237, and by the federal supreme court in Galigher v. Jones, 129 U. S. 193. The rule in these cases, and as it is more clearly stated by the Connecticut court, is now adopted by the majority of the states. Citizens' St. Ry. Co. v. Robbins, 144 Ind. 671; Dimock v. U. S. Nat. Bk., 55 N. J. Law, 296; Ralston v. Bk., 112 Cal. 208. Although severely criticized by Mr. Sedgwick in his work on Damages, it has the advantage of affording the complainant a just and equitable relief without either giving him the opportunity to speculate upon his damages upon one hand, or on the other, of imposing a harsh and excessive punishment upon the debtor. Sedgwick, Damages, sec. 508, *et seq.* Where the stock has not advanced, under the prevailing rule, the complainant can obtain only nominal damages. Taussig v. Hart, 58 N. Y. 425.

It is interesting to note that the Connecticut court held it necessary to plead as special damage the fact that the stock had risen in value between the time of conversion and the time when it might have been replaced, and would not allow proof of that fact to be admitted under the general claim for damages.—*Yale Law Journal.*

MASTER AND SERVANT—LIABILITY OF OWNER OF AUTOMOBILE FOR DAMAGES RESULTING FROM ITS OPERATION BY ANOTHER.—How far the owner of an automobile is liable for its operation by a servant or another with his permission, is an interesting question. On this question the recent case of Reynolds v. Buck, 103 N. W. Rep. 946, is in point. In this case it appeared that defendant, who dealt in automobiles, decorated one for use in a parade, and, after the parade, directed that the automobile, which stood in front of the store, be taken inside, and he then left. His son, employed by defendant as a clerk, and who had been given a holiday that day, coming upon the machine where it stood, invited a lady friend to ride; and, while he was driving, plaintiff's horse took fright at the machine, whereby plaintiff was injured. It was held that defendant was not liable, even conceding the son's negligence. The court said:

"At the time of the accident causing the plaintiff's injuries the defendant was a dealer in agricultural implements, buggies, automobiles, etc., in the city of Davenport, and his son, Emil J. Buck, was in his employ as a clerk. There was an automobile parade in the city of Davenport in the afternoon of the day in question, and, on the solicitation of the committee having the matter

in charge, the defendant decorated an electric automobile belonging to him, and the machine, operated by one of his daughters, had a place in the parade. The son, Emil J., who had been employed in his father's establishment for some time, was given a layoff or holiday for the parade. He spent the forenoon of the day in decorating a steam automobile that he inended to use in the parade, and in the afternoon, during a part of the time that the parade was in progress, he and some of his friends used the steam machine on the streets. They then returned it to the defendant's place of business, and left it on the premises; and soon thereafter the son and his companions, young men and women, went to the river. In the meantime the parade was concluded, and the electric machine was returned to the defendant's place of business by the daughter, and left on the street, in front of the store. The defendant was present at the time, and directed an employee to take it in, and soon thereafter he left the store. A short time after the defendant had left the store the son, Emil J., and a young lady friend returned thereto; and she, desiring to go home from there, accepted his invitation to ride home in the automobile. He took her to her home by the nearest route, and on his way back to his father's store the plaintiff's horse became frightened at the machine, and the accident happened, resulting in the injury complained of.

Conceding, for the purpose of this appeal, that the son was negligently operating the machine at the time of the accident, was such negligence chargeable to the defendant under the evidence? We are clearly of the opinion that it was not. The direct evidence all shows that his use of the electric automobile was solely for the pleasure and convenience of the young lady and himself, and that it was in no way or sense connected with his employment or with the defendant's business.

The mere fact that the automobile still wore the decorations, and that it might on account thereof attract attention, and incidently advertise the defendant's business, would not have justified the jury in finding that the son was about his father's business at the time. An inference so farfetched should not be permitted to control and destroy direct and positive testimony to the contrary. Meyer v. Houck, 85 Iowa, 319, 52 N. W. Rep. 235. The son had been given a holiday and was master of his own time on that day. This is conclusively shown. The defendant had ordered the machine put away, and did not know that his son wished or intended to use it. It was taken and used for the son's own pleasure, and we think the verdict was very properly directed for the defendant."

The same principle is followed in the recent case of Sullivan v. Morice, 109 Ill. Ap. 650, where an employer was held not liable for negligent act of employee in gathering up waste material for his own use with permission of his employer.

RESTRICTING COMPETITION IN CONTRACTS FOR PUBLIC WORK—TEST OF VALIDITY.

1. Laws demanding unrestricted competition.
2. Laws restricting the doing of the work within the limits of the state.
3. Laws requiring printing to bear the union label.
4. Other restrictions.
5. Increase of cost of work as test of validity.
6. Same—the rule considered.

1. *Laws Demanding Unrestricted Competition.*—The recent decision of the Supreme Court of Missouri, sustaining the validity of a general municipal ordinance requiring all ordinances and contracts authorizing the doing of public work in a particular city, which involved the use of dressed rock, granite or stone, to contain a provision that the work of dressing such rock, granite or stone should be done within the boundaries of the state,[1] is another judicial contribution to a question which, during the past few years, has received much consideration. Judicial utterances respecting the validity of laws and ordinances of this character present a contrariety of opinions.

Statutes and municipal charters usually provide for unrestricted competition in the letting of contracts for all public work, especially in the construction and reconstruction of streets, sewers and drains, where such work is to be paid for by the property owner by special assessment or special taxation (sometimes termed), levied on property assumed to be benefited because of the improvement. Competitive bidding and public awarding of contracts for such work to "the lowest responsible bidder," are exacted on the ground of public policy, to avoid favoritism, extravagance, improvidence and corruption. Obviously, such laws should be so administered and construed as fairly and reasonably to accomplish this purpose.[2] An equal basis is the just claim of every bidder, which the courts will enforce.[3] Generally,

[1] Allen v. Labsap, 87 S. W. Rep. 926.

[2] People v. Gleason, 121 N. Y. 631, 634, 25 N. E. Rep. 4; Dickinson v. Poughkeepsie, 75 N. Y. 65; Liddy v. Long Island City, 104 N. Y. 216, 10 N. E. Rep. 155; Board of Richmond County v. Ellis, 59 N. Y. 620; McDonald v. New York, 68 N. Y. 23; Brady v. New York, 20 N. Y. 312; Nelson v. New York, 5 N. Y. Supp. 688; Chicago v. Hanreddy, 102 Ill. App. 1.

[3] McQuiddy v. Brannock, 70 Mo. App. 535; Clapton v. Taylor, 49 Mo. App. 117; Keane v. Klausman, 21 Mo. App. 485; Brambrick v. Campbell, 37 Mo. App. 460.

laws of this character are held mandatory.[4] However, some laws are construed as investing public officials with a wide discretion in awarding such contracts.[5]

2. *Laws Restricting the doing of the Work within the Limits of the State.*—In the late Missouri case,[6] the action was against a property owner, to enforce the lien of a special tax bill for street work done by a contractor by virtue of a contract with a municipal corporation, under a charter requiring contracts of the character in question to be let, after public advertisement, "to the lowest bidder." Resistance was based on the theory that the property owner was compelled to pay more for the improvement involved by virtue of the existence of the ordinance than he would be required otherwise to pay. The court conceded the principle sound, that if the ordinance tended to prevent competition and to increase the price of the improvement, and thus the tax bills of the property owners required to pay therefor, the property owner had suffered injury thereby, and hence, had just cause of complaint; otherwise, not. To support the view that he was injured by reason of the ordinance, in that, competition was thwarted and the amount of his tax bill increased thereby, the property owner rested his case on an issue of fact rather than a construction of the ordinance, as appears by his request of the following declaration of law, which the trial court gave:

"The court declares the law to be that, under the contract offered in evidence, it was required that all work of dressing rock, granite or stone required by said contract should be done within the territorial limits of the state of Missouri, and said work could not under said contract be done in any other portion of the United States. The court further declares the law to be that, if it shall find from the evidence that the effect of the provision in said contract above mentioned was to prevent competition and to increase the cost of doing the work referred to in the evidence, and the said provision could not in any way tend to procure a better class or quality of work under the contract referred to in the evidence, the said contract was in violation of the provision of the charter of the City of St. Louis, and was illegal and void as against defendant in this case, and the special tax bill issued in payment of said contract was also illegal and void."

The finding of the trial court was contrary to the hypothesis of fact of the declarations; that is, the finding of fact was that the operation of the ordinance in question in the particular case was not to the injury of the property owner. Under the rule of practice long since adopted by the court, the supreme court declined to interfere with this finding, and further declared that the ordinance was free from all objections interposed based on constitutional grounds. Former Missouri decisions were cited and approved, as in point, to sustain the ordinance, which decisions are, to the effect that a municipal charter requiring contracts for public work to be let to the lowest responsible bidder, was not violated by awarding street paving contracts to one bidder alone who had a monopoly of the paving material—Trinidad lake asphalt, or a patented cement as a binding for the macadam used in street improvement—called for in the public advertisement.[7]

It may be stated that, while the Supreme Court of Wisconsin is opposed to the Supreme Court of Missouri on the latter proposition,[8] and is supported by the decisions of other states,[9] the tendency of the courts ap-

[4] Worthington v. Boston, 152 U. S. 695; City Improvement Co. v. Broadrick, 125 Cal. 139, 57 Pac. Rep. 776; Whitney v. Hudson, 69 Mich. 189, 37 N. E Rep. 184; Baltimore v. Keyser, 65 Md. 105, 19 Atl. Rep. 706.

[5] Dement v. Rokker, 126 Ill. 174, 189, 19 N. W. Rep. 33; Kelly v. Chicago, 62 Ill. 279, 281; Mayo v. Commissioners, 144 Mass. 74, 6 N. E. Rep. 757; State v. McGrath, 91 Mo. 386, 394, 3 S. W. Rep. 846; Wilson v. Trenton, 66 N. J. L. 599, 44 L. R. A. 540, 40 Atl. Rep. 575; Douglass v. Commissioners, 108 Pa. 559; Com. v. Mitchell, 82 Pa. St. 343.

[6] Allen v. Labsap, 87 S. W. Rep. 926.

[7] Swift v. St. Louis, 180 Mo. 80, 79 S. W. Rep. 172; Verdin v. St. Louis, 131 Mo. 26, 33 S. W. Rep. 480, 36 S. W. Rep. 52; Barber Asphalt Co. v. Hunt, 100 Mo. 22, 13 S. W. Rep. 98, 8 L. R. A. 110, 18 Am. St. Rep. 530; Barber Asphalt Co. v. Field, 86 S. W. Rep. 860. In McCormick v. Patchin, 53 Mo. 33, a special tax bill for Nicholson pavement was sustained without question.

[8] Dean v. Charlton, 23 Wis. 590, 99 Am. Dec. 205. Rule somewhat restricted in Kilvington v. Superior, 83 Wis. 222, 53 N. W. Rep. 487. Examine Dean v. Borchsenius, 30 Wis. 400, 9 Am. Rep. 578, being construction of statute relating to specified kind of pavement.

[9] Mulrein v. Kalloch, 61 Cal. 522; Nicholson Pav. Co.v. Painter, 35 Cal. 699; Barber A. P. Co. v. Gogreve, 41 La. Ann. 251, 5 So. Rep. 848; Burgess v. Jefferson, 21 La. Ann. 143.

pears to favor the rule of the Missouri cases.[10] The Wisconsin court has held that a municipal corporation cannot contract to lay Nicholson pavement where the right to lay it is patented and owned by a single firm, under a charter requiring unrestricted competition. The court remarked that, the contention that there could be no competition in the letting of the contract, "seems unanswerable. * * * It seems to me, therefore a conclusion derivable from the very nature of the case that competition could not be and was not preserved in the letting of this contract, and that it was, therefore, beyond the scope and in violation of the spirit of the charter."[11]

3. *Laws Requiring Printing to Bear the Union Label.*—The unanswerable reasoning of the Wisconsin case has been applied in cases involving ordinances requiring all printing done at public expense to bear the union label. In these cases the courts readily conclude that restrictions of this character necessarily limit the doing of such work to those alone who are authorized to use the union label, and, therefore, clearly contravene laws demanding open and free competition to all competent bidders. Thus the Supreme Court of Tennessee, in a comparatively recent case, declared void and unconstitutional an ordinance which required all city printing to bear the union label, under a municipal charter exacting competitive bidding and contracts to be let to the lowest responsible bidder. This court found, without difficulty, first, that the ordinance was in plain conflict with the spirit, purpose and letter of the municipal charter; second, that it was class legislation, arbitrarily discriminative in its character and contrary to public policy, in that, it stifled competition and fostered monopoly; and, third, that it was violative of the 14th amendment of the constitution of the United States and the provisions of the state constitution relating to due process of law, equal protection of the law, etc., because it deprived those not using the label from pursuing their avocation so far as such public printing was concerned.[12] In a like case, the Supreme Court of Georgia announces the broad doctrine that all such contracts are void when not executed. In that case the municipal charter did not require contracts for work of the character in question to be let to the lowest bidder, but the public officers were clothed as to such matters with the broadest discretionary powers, yet this court plainly declared that a municipal corporation has no power to adopt an ordinance prescribing that all work of a designated kind (printing) shall be given exclusively to persons of a specified class (those authorized to use the union label); and that such an ordinance is *ultra vires* and illegal, because it tends to encourage monopoly and defeat competition, and all contracts made in pursuance thereof are void.[13] In Illinois, printing contracts let under an ordinance which excluded the bidding of non-union labor, were declared void, but in this case it affirmatively appeared that because of the restriction the cost of the work had been increased.[14]

4. *Other Restrictions.*—In another case in the same state, a board of education restricted the bidding for work on public buildings so as to exclude non-union labor. Here it appeared that the cost of the work was increased because of such restriction. The restriction was held invalid.[15] In Pennsylvania under a statute requiring the contract to be awarded "to the lowest responsible bidder," a like ruling was made.[16] The courts have frequently declared that contracts in which the public are interested, let under circumstances which tend to prevent competition, are void.[17]

Courts decline to sustain ordinances, which in substance provide, that, no contract requiring the employment of skilled labor on public work in any of the municipal depart-

[10] Hobart v. Detroit, 17 Mich. 246, 97 Am. Dec. 185; Harlem Gas Light Co. v. New York, 33 N. Y. 309; People v. Van Nort, 65 Barb. (N. Y.) 331; Newark v. Bonnell, 57 N. J. L. 424, 51 Am. St. Rep. 609, 31 Atl. Rep. 408; Silsby Mfg. Co. v. Allentown, 153 Pa. St. 319, 26 Atl. Rep. 646.

[11] Dean v. Charlton, 23 Wis. 590, 99 Am. Dec. 205.

[12] Marshall v. Nashville, 109 Tenn. 495, 71 S. W. Rep. 815, 65 Alb. L. J. 102, fully reviewing the cases on the subject.

[13] Atlanta v. Stein, 111 Ga. 789, 51 L. R. A. 335, 36 S. E. Rep. 932.

[14] Holden v. Alton, 179 Ill. 318, 324, 53 N. E. Rep. 556.

[15] Adams v. Brenan, 176 Ill. 194, 69 Am. St. Rep. 222, 42 L. R. A. 718, 52 N. E. Rep. 314.

[16] Elliott v. Pittsburg, 6 Pa. Dist. Rep. 455.

[17] Fishburn v. Chicago, 171 Ill. 338, 63 Am. St. Rep. 236, 39 L. R. A. 481, 49 N. E. Rep. 532; Foss v. Cummings, 149 Ill. 353, 36 N. E. Rep. 553; People v. Chicago Gas Trust Co., 130 Ill. 268, 17 Am. St. Rep. 319, 8 L. R. A. 497, 22 N. E. Rep. 798.

ments shall be made with any person, firm or corporation unless it is expressly agreed in such a contract that only union labor shall be employed on such work.[18]

5. *Increase of Cost of Work as Test of Validity.*—Prior to the recent decision of the Missouri Supreme Court, above mentioned, the St. Louis Court of Appeals, in passing on a case wherein the same municipal charter, the same ordinance and the same declaration of law were involved, remarked: "Unquestionably these requirements were intended to secure unrestricted competition among bidders, and, if in the case at bar, the effect of the ordinance mentioned was to prevent competition and to increase the cost of the work, then the contract for the work was in violation of the charter, which rendered it void and the tax bill issued thereunder was likewise void. The circuit court submitted these questions of fact to itself as the trier of the facts, and it found that the effect of the ordinance was to restrict the bidding, thereby increasing the cost of the work. As there was substantial evidence to support the finding we must affirm the judgment."[19]

In a later case the same charter provision and the same ordinance came again before the St. Louis Court of Appeals. But there was no evidence in the record that the letting of the work was influenced by the ordinance, or that any contractor did not bid who would have bid had there been no such ordinance. Respecting the cost of the work, the evidence tended to show, and the trial court so found, that it was not increased because the stone was dressed in the territorial limits of the state. In referring to the charter provision, the court remarked that, it has for its object the protection of the property owner in securing untrammeled and unrestricted competition in the letting of street construction work, and any ordinance, that does restrict the letting, or by other restriction, increases the cost of material or labor for doing the work, is obnoxious to the charter. And in referring to the earlier case, the court said: "This very ordinance was condemned because the evidence showed that in that case the requirement of the ordinance, that the stone should be cut in the territorial limits of the state of Missouri, did increase the cost of the work. The same result was followed in this case but for the fact that the evidence shows that the ordinance had no such effect either in restricting bidding or increasing the cost of the construction. It is hardly competent for a court, as a matter of law, to pronounce void every ordinance that enters into a contract for this character of work because it contains restrictions on the contractor in respect to the class or quality of the material to be used, or as to the manner of its preparation for use, or the skill to be employed in its preparation and use, or as to the territory from which it is to be drawn, or in which it is to be prepared, provided the territory is broad enough not to restrict competition. For, while such restriction may appear to prevent competition, the facts may show that they have no such effect, but on the contrary that the restriction in the particular case tended to cheapen the work rather than to increase its cost and to stimulate rather than restrict competition. Seemingly, the ordinance conflicts with the charter. But as to this particular piece of work, under the evidence and finding of the court, there was no conflict. It had no influence on the letting and did not increase the cost of the work. The property owners were not injured by it and it would be highly unjust to relieve them of their charter obligation to pay their just proportion of the cost of the work simply because the ordinance was incorporated in the contract when the work cost them no more than if had been left out."[20]

6. *Same—The Rule Considered.*—It thus appears that in Missouri, so far as judicial decision and expression indicate, the test is the operation of the ordinance in the particular case with respect of narrowing competition, resulting in increase of cost. The same test appears to have been applied in some of the Illinois cases, above cited, for these and the Missouri cases seem to turn on the facts presented, rather than upon the validity of the restriction or ordinance involved. This view does not appear to harmonize fully with the opinions of the Georgia and Tennessee courts. In a subsequent Illinois case, wherein a special assessment for an improvement was

[18] Fiske v. People, 188 Ill. 206, 52 L. R. A. 291, 58 N. E. Rep. 985.

[19] St. Louis Quarry and Construction Co. v. Von Versen, 81 Mo. App. 519, 522.

[20] St. Louis Quarry and Construction Co. v. Frost, 90 Mo. App. 687, 689, 690.

involved, the rule is declared to be that "the property owner is not obliged to show in each instance that he was prejudiced by the unlawful restriction and disregard of the law, but it is for the authorities seeking to impose the burden upon his lands to prove a substantial compliance with all of these provisions designed for his benefit. It would be just as reasonable to insist that if the requirements of competitive bidding were disregarded and the work done by hiring laborers by the day, the property owner must be able to show that the price was not reasonable or that the work was done at a greater expense than it would have been if the law had been complied with. It is a material and important right of the property owner that there shall be free and open competition, unrestricted by illegal and unconstitutional provisions, the natural tendency would be to increase the cost of the work."[21] In cases wherein patented and monopolized articles are involved the question of fact as to increase of cost cannot enter. If the test suggested should be adopted as the rule of law, the validity of the contract under the regulation or ordinance containing the restriction of the character under review, must remain in doubt until the facts are developed, to demonstrate the practical operation of such restriction in each case as it arises. If the trial court finds the facts one way, and there is any evidence to sustain the finding, the appellate court will not interfere. As above pointed out, the application of this test in Missouri has resulted in two judgments for the contractor and one for the property owner.

It will be conceded that it is the first duty of public officers to secure the most advantageous contracts possible to accomplish the work under their direction. Regulations which tend to hamper or restrict them in the attainment of this end are likely to operate against the public interests. Therefore, statutes and organic laws of municipal corporations imperatively demand unrestricted competition among bidders for public work, whether they employ union or non-union labor, or prepare the materials which enter into the work within or without the boundaries of the particular city or state, or whether they or those who act for them as agents or servants in executing the work under the letting, reside within or without these limits. Regulations which may operate to prevent unrestricted competition, or which may be used directly or indirectly to this end, certainly were not contemplated when the organic laws under which the public officers act were drafted and passed. It has long been a principle of our jurisprudence that a law which may be operated by public officials partially or unequally is of doubtful validity. When the public calls for a patented or monopolized article controlled alone by one person, firm or corporation, it is self-evident that the fundamental legal provision authoritatively directing the officers to let the contract to the lowest responsible bidder, contemplating as it does competition, must, for the purpose of letting the contract, remain in innocuous desuetude. The courts, with seeming gravity, inform us that the public needs the article, and therefore, the exigencies of the existing conditions justify lulling the law into quiet repose for the time being, but in due and legal form be it remembered, to be revived again in all its vigor and potency when it is sought to be caused again to slumber, to foster another kind of monopoly for the benefit of another class of citizens. While the analogy is neither close nor striking, probably the fiction of abeyance, sometimes applied to certain real estate titles, could be invoked with propriety to aid the first class of monopoly. Under this symbolism the law at the time of the letting would be suspended, but potentially existing, as the old real estate lawyer would say, and ready to operate with effect whenever proper occasions arose. But now a new limitation, duly superimposed by municipal legislation in the form of a general ordinance receives judicial sanction, and the validity of which is asserted to be based on the same legal principle which sustains restrictions as to patented and monopolized articles. The restriction involved concerns those who labor or employ labor in dressing stone, which is used in public work. It merely circumscribes the place of doing this work. The restriction is that the labor of dressing the stone shall be done in the state,

[21] McChesney v. People, 200 Ill. 146, 150, 151, distinguishing Treat v. People, 195 Ill. 196; Grey v. People, 194 Ill. 486; Givens v. People, 194 Ill. 150, and Hamilton v. People, 194 Ill. 133. The McChesney case is approved and followed in Sweet v. People, 200 Ill. 536, 65 N. E. Rep. 1094.

but the doing of such labor is not confined to persons of a class or any class of persons. No citizen is forbidden to do the work, provided he works in the state. Yet he is not at liberty to do the work elsewhere. Surely, the practical effect is that citizens of the state are thus given a monopoly of this class of work. Others are not in terms excluded, but to do the work they must reside temporarily or permanently in the state, and therefore, by implication, they are excluded as certainly and directly as if the exclusion should be expressed in unequivocal terms, unless they choose to become residents for the time being of the state. The discrimination is palpable. It is of an unfair, selfish type. Discrimination in laws or ordinances are frowned upon by the courts. They are pronounced unconstitutional, absolutely and unconditionally.[22] On principle wherein does this discrimination, in terms as to place, but in fact as to persons, differ from discriminations as to union and non-union labor denounced in the decisions, above mentioned? Permit the courts to answer: To nullify a contract let under the restriction, in words as to the place of doing the work, but in truth and in spirit as to those who do the work, it must affirmatively appear that competition was thereby prevented, and as a direct result, the cost of the work increased; and, as we have seen, this test must be rigidly adhered to, irrespective of uniformity in result. But where the restriction relates to union or non-union labor a different test must be applied. The courts refuse to enter upon the inquiry, whether competition was thereby prevented and the cost of the work increased. Upon the face of the regulation, they conclude that the restriction must, inevitably, throttle competition and result in unjust discrimination. This conclusion is wise and salutary, and establishes a uniform rule by which those interested may be governed in their personal and property rights. It places the right of every citizen recognized by the law, which may be affected by the regulation, beyond the caprice or whim of public servants who may, through ignorance or design, seek to foster favoritism or corruption. It approximates equal and exact justice, and endeavors to guarantee to every citizen that great and priceless constitutional boon of equal protection under the law. To be protected in his fundamental constitutional rights, it does not demand that the citizen should stand before the court as a party litigant. It comprehends a judicial vision clear enough and broad enough to see citizens who may have been excluded by the regulation from bidding for the work involved. To such it extends the full protection of the constitution. The other view, as has been demonstrated by its concrete application in the Missouri decisions, not only produces confusion and uncertainty and thereby invites litigation, but, in effect, judicially sanctions discrimination among citizens, based on place of residence, provided, the conceded inequality tolerated, and thus legalized, does not, in the given case, cost any more in dollars and cents to the one who is required to pay than if the forbidden exclusion had not been allowed. This doctrine, stated in its entirety, would permit the exclusion from bidding on public contracts of any person, firm or corporation, or any class of citizens, whatever might be the basis of exclusion, provided, in event of litigation, the evidence shows that the discrimination did not increase the cost of the work. Manifestly, such test is vicious. It destroys competition, tolerates discrimination, promotes favoritism and fosters monopoly. It should never find lodgment as a rule of law in a constitutional and enlightened system of jurisprudence. To say that the citizen should in this manner be deprived of the equal protection of law, because he is not a party to the record in the case submitted for judgment would be worthy only of that state of society where the sentiment prevails,

"That they should take who have the power,
And they should keep who can."

EUGENE MCQUILLIN.

St. Louis, Mo.

[22] Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. Rep. 1064, 30 L. Ed. 210; Gillespie v. People, 188 Ill. 176, 58 N. E. Rep. 1007, 80 Am. St. Rep. 176, 52 L. R. A. 283; Cairo v. Feuchter, 159 Ill. 155, 42 N. E. Rep. 308; Eden v. People, 161 Ill. 296, 43 N. E. Rep. 1108, 32 L. R. A. 659, 52 Am. St. Rep. 365; State v. Loomis, 115 Mo. 307, 22 S. W. Rep. 350, 21 L. R. A. 789; People v. Gillson, 109 N. Y. 389, 17 N. E. Rep. 343, 4 Am. St. Rep. 465; *In re* Jacobs, 98 N. Y. 98, 50 Am. Rep. 636; Appeal of Durach, 62 Pa. St. 491, 495.

JUDGMENT — COLLATERAL ATTACK IN SUPPLEMENTAL PROCEEDINGS.

GARDINER v. ROSS.

Supreme Court of South Dakota, July 6, 1905.

Where a motion for an order adjudging defendant guilty of contempt for failure to comply with an order previously made in supplemental proceedings, requiring him to pay certain money to plaintiff's attorney, was denied without prejudice, defendant was entitled, on a subsequent motion for an order to show cause, why he should not be punished for contempt for the same reason to present a defense arising after the making of an order in the supplemental proceedings.

Where, after the making of an order in the supplemental proceedings, requiring the payment of a judgment, it was rendered void by a discharge of the judgment debtor in bankruptcy, he was entitled to move to set aside the order, and his liability was not *res judicata* by reason of the fact that the order in the supplemental proceedings was not appealed from.

CORSON, P. J.: This is an appeal by the defendant from two orders made by the circuit court of Roberts county, bearing date of September 5 and October 27, 1903, in two cases which by stipulation are to be heard together upon abstract and brief in one case. As the proceedings were practically identical in the two cases, it will only be necessary to consider the proceedings and orders in one case. In February, 1900, the plaintiff recovered a judgment against the defendant James Ross and Alexander Ross for the sum of $514.11, and about the same time a judgment against James Ross individually for the sum of $812.45. Subsequently, on April 30, 1900, an order to show cause was issued against said James Ross requiring him to be examined on supplementary proceedings, and on May 10th the order was granted with the usual restraining clause, and upon the report of the referee on May 19, 1900, the court made the following order: "Ordered, that the defendant James Ross forthwith deliver and pay to J. J. Batterton, the plaintiff's attorney, a sufficient amount out of the sum of sixteen hundred dollars, in money, disclosed by said defendant, and now in his hands and under his control, and one share of one hundred dollars of the capital stock of the Sisseton state bank, disclosed by said defendant, and now in his hands or under his control, or sufficient thereof to satisfy plaintiff's judgment herein and plaintiff's costs and disbursements of this proceeding. * * * Dated at the city of Milbank, South Dakota, May 19, 1900." Said order was duly served upon the appellant Ross on the same day, and duly filed in the office of the clerk of said court. Thereafter, on June 15th, the appellant, in answer to an order to show cause why he should not be punished for contempt for not paying over the money as directed in the order made on May 19, 1900, showed by affidavit that on the 26th day of May, 1900, a proceeding in bankruptcy was pending in the United States Court for the District of South Dakota against the defendant, and that upon the proceedings thereon he was adjudged a bankrupt, wherefore the appellant requested that all proceedings in the above entitled action be stayed for a period of 12 months, and until the question of such discharge should be determined by the said bankruptcy court; and upon such hearing the circuit court made the following order: "Ordered, that the said defendant's motion to vacate said orders dated May 10th and May 19th, be, and the same is, hereby denied, and the said orders are hereby continued in full force and effect, and the plaintiff's motion to punish said defendant for contempt of court is hereby denied, without prejudice. Dated June 15, 1900." No further proceedings were had in the case until July 10, 1903, when, upon affidavits presented by the respondent, the court made an order to show cause why the appellant should not be punished for contempt for failure to pay over the money as directed by the order of May, 1900, and upon September 5, 1903, the court made the following recital and order: "And it appearing to the satisfaction of the court that none of the provisions of said order dated May 19, 1900, have ever been complied with by said defendant, and that he is able to so do, and that his failure and neglect to comply with the conditions thereof is a contempt of court, and that this is a proper case for the making of this order: Now, therefore, it is ordered, and the judgment of this court is, that said defendant James Ross be, and he hereby is, adjudged guilty of a contempt of this court for his failure and refusal to comply with the provisions of said order dated May 19, 1900; and it is further ordered that said defendant James Ross pay to plaintiff's attorneys within thirty days from the date hereof the sum of $734.13, being the amount of the principal and interest now due on said judgment, and the costs on said proceeding supplementary to execution, and all of which was ordered to be paid by said order dated May 19, 1900; and it is further ordered that in case of said defendant's failure or neglect to do or perform any of said acts within the time aforesaid that then the sheriff of Roberts county, South Dakota, shall forthwith arrest the said defendant James Ross, and confine him in the common jail of said county until such time as the provisions of said order of May 19, 1900, and the provisions of this order shall be fully complied with, and the clerk of this court shall issue his warrant of commitment to the sheriff of said county in accordance with this order, and the said sheriff shall thereupon execute the same. Dated September 5, 1903." A similar order was made in the second case. On October 1, 1903, the defendant moved the court to vacate and set aside the judgment in favor of the plaintiff and against the defendants in the above-entitled action rendered on February 2, 1900, and for an order vacating and setting aside the order of said court made on May 10, 1900, and for an order vacating and setting aside

the order of said court made on May 19, 1900, and for an order vacating and setting aside the order of the said court made on the 5th day of September, 1903, adjudging the defendant guilty of contempt of court for his failure and refusal to comply with the provisions of said order dated May 19, 1900, ordering the defendant to pay to plaintiff's attorneys the sum therein specified, and for an order vacating and setting aside and annulling all proceedings supplementary to the execution and enforcement of the judgment in the above-entitled action upon the ground, among others, that the judgment in the above-entitled action has been and is barred by the proceedings in bankruptcy in which he has been discharged as such bankrupt. This motion was denied upon a hearing on the 22d day of October, 1903. On October 27, 1903, the appellant perfected his appeal from the order dated September 5, 1903, and also an appeal from the order of October 22, 1903.

It will thus be seen that the judgments were rendered February 2, 1900, that the order requiring the defendant to pay over the moneys alleged to have been disclosed by him was made on May 19th, and that a motion that defendant be adjudged guilty of contempt of court in failing to pay over the said money was denied on June 15, 1900, and that the motion to set aside and vacate the former orders of May 10 and 19, 1900 was denied. No appeal was taken from either of these orders made in May and June of 1900. It further appears that the bankruptcy proceedings were instituted on May 26, 1900, and it is disclosed by the record that the proceedings culminated in an order discharging the bankrupt on the 4th day of June, 1902. It will thus be seen that more than a year prior to the order adjudging the defendant guilty of contempt of court made in September, 1903, the defendant had been released from liability upon the judgment. The discharge in bankruptcy was made a part of the defendant's answer to the order to show cause in September, 1903, and also used in evidence upon the motion of the defendant to vacate and set aside the proceedings of October 22, 1903.

The appellant seeks a reversal of the orders appealed from upon the grounds (1) of the insufficiency of the evidence to justify an order for contempt, and that the court had no authority to make such an order on a judgment obtained in an action on contract; (2) that the bankruptcy proceedings were a bar to proceedings supplementary to execution; (3) that the property ordered to be turned over was exempt from forced sale and execution. The respondent has interposed a preliminary objection to the hearing of this appeal on the ground that the orders made on May 19 and June 5, 1900, not being appealed from, are *res judicata*, and cannot be questioned in any subsequent proceeding, and that the motion of the appellant to vacate and set aside said order was properly denied on the ground that the said order had become *res judicata*, and could not be subsequently attacked after the expiration of 60 days from the date of the order; and the respondent further contends that the only question before the circuit court was as to whether or not the appellant had complied with the order so made on May 19 and June 5, 1900. But, as we have seen, the motion made in June, 1900, that the defendant be adjudged guilty of contempt for failure to comply with the order of May 19th, was denied without prejudice; and hence, when the order to show cause issued more than three years later why the defendant should not be adjudged guilty of contempt and punished therefor in failing to comply with the order of May 19th it was competent and proper for the defendant to present to the court any defense that he might have to such order to show cause arising subsequently to the making of the order of May 19th. As we have seen, subsequently to the making of the orders of May 19th and June 5th the defendant was released from all liability upon the judgment by his discharge in bankruptcy, and hence such defense was proper, and is subject to review on this appeal. And again, the judgment having become null and void as against the defendant by virtue of the bankruptcy proceedings subsequent to the making of the order of May 19th, it was competent and proper for the defendant to move to vacate and set aside such proceedings, and hence a review of that order of October 22, 1903, is proper on this appeal.

In the view we take of the case, it will only be necessary to consider and discuss the effect of the bankruptcy proceedings, and we therefore shall express no opinion upon either of the other two questions presented. Assuming, therefore, without deciding, that the order of May 19th was properly made upon the evidence then before the court, we are inclined to agree with the appellant that the subsequent proceedings in bankruptcy rendered null and void not only the judgment of February 2d, but also the order of the court made on May 19, such order having been made within four months of the defendant's application to be discharged as a bankrupt. The defendant's discharge in bankruptcy is as follows: "Whereas, James Ross * * * has been duly adjudged a bankrupt under the acts of congress relating to bankruptcy and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said James Ross be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 26th day of May, A. D. 1900, on which day the petition for adjudication was filed by him, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy. Witness the Honorable John E. Carland, Judge of said District Court, and the seal thereof, this 4th day of June, A. D. 1902. Oliver S. Pendar, Clerk." It is stated in the abstract, and not controverted by the respondent, that the judgments obtained against the defend-

ant, were in actions brought on contracts for the recovery of money only, and hence it affirmatively appears by the record that the exception mentioned in the order has no application to this case. Proceedings supplementary to execution necessarily fall when the judgment becomes invalid or void. Newell v. Dart, 28 Minn. 248, 9 N. W. Rep. 732; McAfee v. Reynolds, 130 Ind. 33, 28 N. E. Rep. 423, 18 L. R. A. 211, 30 Am. St. Rep. 194; Miller v. Melone, 11 Okla. 241, 67 Pac. Rep. 479, 56 L. R. A. 620; Bank v. Braithwaite, 7 N. D. 358, 75 N. W. Rep. 244, 66 Am. St. Rep. 653; *In re* Kletchka (D. C.), 92 Fed. Rep. 901.

Section 67*f*, Bankr. Act July 1, 1898, ch. 541, 30 Stat. 565 [U. S. Comp. St. 1901, p. 3450], provides: "That all levies, judgments, attachments, or other liens, obtained through legal proceedings against the person who was insolvent, at any time within four months prior to the filing of the petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt and the property affected by levy, judgment, attachment, or other lien, shall be deemed wholly discharged and released from same." While this section of the act does not mention in terms proceedings supplementary to execution, they must be regarded as included within the spirit of the section and within the intention of the law-making power, and such proceedings are clearly no more effective in obtaining a lien upon the bankrupt's property than would be an attachment proceeding or a chattel mortgage lien thereon, and it would seem to logically follow that when the defendant is released from the judgment, and the same is rendered null and void as against him, that any proceedings taken within four months prior to the application in bankruptcy would necessarily be rendered also null and void, for it certainly would be an anomaly in the law to permit a party to be adjudged guilty of contempt for failure to pay a judgment that had become by the action of courts null and void; and such seems to be the view of the courts in analogous cases heretofore cited.

It is contended by the respondent that the provisions of the bankruptcy act above referred to do not apply to cases of voluntary bankruptcy, but the act seems to make no such distinction, and its provisions have been held to equally apply to voluntary as well as involuntary bankruptcy. *In re* Richards, 96 Fed. Rep. 935, 37 C. C. A. 634; *In re* Rhoads (D. C.), 98 Fed. Rep. 399.

These views lead to the conclusion that the learned circuit court erred in making the order of September 5, 1903, and in making the order denying plaintiff's motion of October 22, 1903, and these orders are reversed.

NOTE.—*Validity of Proceedings Supplementary to Execution After Judgment Becomes Subsequently Invalid.*—It is the purpose of this Journal to present unusual questions of law and practice of actual and practical value to the practitioner in the selection of leading cases. That the principal case is such a case hardly admits of doubt. The case, if carefully read, will prepare attorneys for many disappointments in the prosecution of supplementary proceedings after judgment, and disclose many opportunities for evading the payment of judgments lawfully rendered.

In the principal case the rule is laid down in general terms that if a judgment is recovered against A, and such judgment is not appealed from and therefore becomes effective, and that subsequently supplementary proceedings are commenced to collect such judgment, that if after any order rendered in such supplementary proceeding against such judgment creditor, such judgment creditor should within four months of the date of the rendition of such order, go into voluntary bankruptcy, in which he is finally discharged, such judgment and supplementary orders become absolutely void and unenforceable.

The rule announced by the court in the principal case is based on the general rule that proceedings supplementary to execution necessarily fail when the judgment becomes invalid or void.

It might be instructive to call attention to one of the instances where a supplementary proceeding in aid of execution fails by reason of the judgment becoming invalid before the order made in such supplementary proceeding becomes effective. Thus the commencement within the lifetime of a judgment of an action on the part of the judgment creditor in the nature of a creditor's bill to reach the property of his judgment debtor not subject to execution, will not operate to continue the life of his judgment beyond the statutory period. Hence if this period expire during the pendency of such action or after an order therein, but before such order is executed, the relief sought for in the supplemenary proceeding will have become unavailable, and any order rendered in such supplementary proceeding becomes *ipso facto* void. Newell v. Dart, 28 Minn. 248; Miller v. Melone, 11 Okla. 241, 67 Pac. Rep. 479; McAfee v. Reynolds, 130 Ind. 33. In the last case cited the court said: "The contention of appellant's counsel is, in effect, that the lien of the judgment having expired on the 4th day of July, 1888, after that time no decree could be rendered declaratory of its existence and providing for its enforcement. The appellee's counsel assert that the question is not whether the lien of a judgment upon real estate may be prolonged beyond the statutory period fixed for such liens, but whether the rights and liens existing and held by the plaintiff at the time of bringing suit shall be adjudged and enforced as of the date of the commencement of the action. The plaintiff stated a cause of action when she began her suit. If this is to be entirely defeated it must be for the reason that the efflux of time has destroyed her right. Ordinarily, a plaintiff will succeed if, at the time he sues, a complete cause of action exists in him. This is a general rule to which there are few exceptions. If the right of action which existed in the plaintiff when she began her action has been destroyed, it must be because the law so operates as to take it from her. There is no express enactment devesting the cause of action and no event has occurred changing the position of the parties. The only thing that can be said to have affected the case in any way is the lapse of time. If this can be assigned a retrospective effect, then there is plausibility and force in the contention that the right of action was wholly swept away; if not, then the contention is foundationless. If the lapse of time, without any fault of plaintiff, can destroy a cause of action, then it is in the power of the defendant, by prolonging litigation, to destroy a meritorious cause of action, and this is a result not to be reached without strong and cogent reasons. * * * It seems

clear to us, on principle, that the appellee did not lose her cause of action because of the lapse of time, and that the time which intervened between the bringing of the suit and the decision cannot so operate as to defeat her suit. What its effect is upon the measure of relief is quite another question. The difficult question here is not as to the existence of a right of action at the time the complaint was filed, but the difficult question is as to the measure of relief the plaintiff was entitled to at the time the decree was entered. * * * We are satisfied that the trial court did not err in adjudging that the appellee had a right of action at the time her suit was commenced, but we cannot escape the conclusion that it erred in holding that she was entitled to a decree ordering the land sold and placing the lien above the title of appellant. This was erroneous for the reason that it assumed to give vitality to a lien which, by positive and inexorable law, was lifeless."

JETSAM AND FLOTSAM.

OWNERSHIP OF PROPERTY IN CASE OF ROBBERY.

The common-law definition of robbery as the felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence or putting him in fear, leaves open the question whether the person from whom the property is taken must be the owner of it. On the part of the defendant, it has often been claimed in such cases that the offense was not committed because the property was taken from someone other than the owner. In State v. Montgomery, 181 Mo. 19, 67 L. R. A. 343, 79 S. W. Rep. 693, the robbery of a clerk by compelling him to take money from a cash drawer was held to sustain a conviction, though the clerk had no personal interest in the money. This case is clearly sustained by the authorities on the subject, which have been reviewed in the annotation of the case in 67 L. R. A. 343. The contention to the contrary is clearly one of those technicalities of strict construction which have sometimes found lodgement in the criminal law. To sustain it would be manifestly against the reason of the law, and constitute an obstruction to justice. In some cases it has been held that the interest of the person robbed must be such as would entitle him to maintain an action for the property if taken out of his custody, but these cases, which were decided in Missouri, are overruled by the Montgomery case, and it seems to be now universally true that the ownership of the property by the person robbed is not an essential element in the crime.—*Case and Comment.*

COURT NO POWER OVER A JACKASS.

"No power on earth can prevent a jackass from braying. This court is powerless to afford relief in this case, and the injunction is dissolved," said Judge Dana of Richland, Kan., recently, in dismissing a suit brought by the postmistress of that place against the owners of a number of jackasses to prevent their braying. Tibbetts & Hotz own a livery stable in Richland, next door to the post office, whose mistress had been sorely annoyed during the day and night by the rancorous braying of the discontented jacks in the livery barn. Whenever she sought to while away the tedious hours by singing softly to herself, the jacks would break in and agitate the atmosphere with their distracting noise. At night, when she raised her windows to get a breath of fresh air, her ears would be benumbed by the hee-haw of the jacks.

She appealed to the owners of the stable to suppress the animals, but they politely informed her that to bray was the chief delight and function of a jackass, and they could not prevent it. Furthermore, the nature of their business precluded sending the offending animals away for the night. Finally she appealed to the court and secured from a judge in Shawnee county a temporary injunction against Messrs. Tibbetts & Hotz. Then she gave final warning to them that the noise must cease. They immediately took the case before Judge Dana. It was one of the most unique hearings in the history of Kansas even, which is the author and scene of many unique things.

In their reply to the injunction, Messrs. Tibbetts & Hotz set up that the courts and, in fact, all human machinery, stood absolutely powerless to prevent the braying of a jackass. They cited instances where various expedients had been tried, such as dynamite, muzzling, solitary confinement, etc., but all efforts had proved futile. It was ably argued before the court that a Missouri and Kansas jack, or mule, was a unique feature in the eyes of the world, and entitled to consideration. It was shown that pages of comic weeklies are devoted to this peculiar animal and his predilection for braying and kicking. These had been peculiarities of the jackass from the beginning of the world and would be to the end thereof.

While they regretted that any of their property should prove annoying to the postmistress of Richland, for which lady they had profound esteem, they could not prevent their jacks hee-hawing, nor could they cripple their own business by disposing of the animals, "and your petitioners will ever pray, etc."

Judge Dana pondered at some length over the case and finally announced that he would dissolve the injunction. "It is apparent to any student of animal nature," he said, "that human agencies are helpless to prevent the braying of a jackass. It is his nature and the court can afford no relief. Let the order dismissing this case be entered."

THE SUMMING UP BY THE PRESIDING JUDGE AT A TRIAL.

We have long been accustomed to consider the summing up by the presiding judge an essential part of the procedure in a trial in the crown court or at *nisi prius*. This summing up, which is generally a compendious restatement of the evidence, with an explanation of the main questions to be determined, and of the law applicable to the case, must be, one would think, of great assistance to a jury who take no notes, and have probably overlooked or forgotten a material part of the testimony of the witnesses. The practice of summing up the case at a trial before a jury has been more or less imitated by chairmen at public meetings, who summarize the speeches which have been delivered, and there appears to be no likelihood of its being abandoned in this country. But the practice of other nations is different. In France, a law of June, 1881, amending article 336 of the Code of Criminal Procedure, has abolished the summing up by the president in the court of assizes, the only court in which cases are tried by a jury. The ground of this legislation was that the summing up was useless and dangerous, inasmuch as it interfered with the right of the accused person to have the last word. With regard to the United States, it appears that in some of the states the jury are constituted judges of the law as well as of the facts in criminal cases, an arrange-

ment which assimilates the duties of the judge to those of the moderator of a town meeting or the preceptor of a class of law students. In several of the states the judge is not bound to sum up the facts, and there appears to be much jealousy of any proceeding on his part which may be thought to invade the province of the jury. Even in England judges have differed widely as to the proper length of a summing up. In a case tried before Cresswell, J., which lasted several days, and in which the question was whether the testator was of sound and disposing mind, memory, and understanding, the learned judge, after explaining the nature of the inquiry, told the jury that it was unnecessary for him to sum up the evidence as it had been fully discussed in the speeches of counsel. This case may be contrasted with the summing up of Cockburn, C. J., in Reg. v. Tichborne, which lasted eighteen clear court days.—*Solicitor's Journal.*

ESCROW—PERFORMANCE OF CONDITIONS.

In Guild v. Althouse, the Supreme Court of Kansas decided recently that a deed with covenants of warranty, duly signed and acknowledged, purporting to convey land, not by metes and bounds, but by a description so definite that the land to be conveyed can be ascertained with certainty, and delivered by the grantor to a third person under an agreement with the grantee that the depositary is to deliver the deed to him upon the doing of a certain thing by the grantee, is an escrow. Upon the performance of the condition by the grantee the deed becomes of full force and effect, and the grantee is entitled to the possession of it, and the death of the grantor does not abrogate the contract of deposit. Davis v. Clark, 48 Pac. Rep. 563, 58 Kan. 100.

HUMOR OF THE LAW.

Chister: "That case will prove a gilt-edged proposition."

Eckitty: "Of course with 'u' in it."

"But," said the lawyer, "your case seems hopeless. I don't see what I can do for you. You admit that you beat your wife."

"Yes," replied the defendant, "but my wife's testimony will discount that. She'd never admit that she was beaten.

"Mr. Attorney," said the judge, after sending the defendant to jail for six months, "how does it happen that this man was only fined in the court below?"

"Your Honor," he replied, with dignity, "I was not his counsel in the lower court."

And, somehow, the other lawyers present seemed to feel that he had explained it.

A certain judge in the years when he ornamented a circuit bench in South Carolina, is said to have bonded considerable of the mountain dew. One day after dinner he had evident difficulty in concentrating attention upon an argument by counsel, who at length in desperation suggested that the case ought to be heard by the full court.

"I think you would have difficulty in finding a fuller court," beamed the justice.

At Willow Springs, Mo., several years ago, two lawyers were engaged in the trial of a case before a justice of the peace who held court over a livery stable. Col. Watts on one side, and on the other one who was familiarly known as "Buffalo Bill" Jones. It is said that if the wit which was exchanged between these two in the trial of cases in that section were written up, it would make interesting reading. Suffice it for this occasion that while Col. Watts was engaged in his argument, a jackass in a livery stable below struck up a loud and lively tune, drowning out Col. Watts' voice, who stopped in the midst of his argument till the music died out below, and then turning to Jones, in a very impressive manner, Col. Watts inquired: "Mr. Jones, did you speak?

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

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1. ABATEMENT AND REVIVAL—Trover and Conversion.—Where the right to bring an action for a conversion vested in a person before his death, it passed to his administrator.—Hagar v. Norton, Mass., 73 N. E. Rep. 1073.

2. ACTION—Foreclosure of Mortgage.—A holder of a note secured by mortgage and of a note for unpaid interest signed by the same maker may enforce payment of both notes in one action to foreclose the mortgage.—Kleis v. McGrath, Iowa, 103 N. W. Rep. 371.

3. ACTION—Joinder of Causes.—A count for money had and received and one for a note given in settlement of such claim held properly joined in a complaint.—Schultz v. Kosbab, Wis., 103 N. W. Rep. 287.

4. ADOPTION—Order Amended Nunc Pro Tunc.—A court having found the necessary jurisdictional fact as to the residence of the adopted child, on entering an order of adoption, held entitled to amend the order *nunc pro tunc* 15 years thereafter by inserting a finding of such fact.—Ward v. Magness, Ark., 86 S. W. Rep. 822.

5. ADVERSE POSSESSION—Acknowledgment of Title.—Acknowledgment by adverse claimant of owner's title before the statute has run in his favor breaks the continuity of his adverse possession.—Olson v. Burk, Minn., 103 N. W. Rep. 335.

6. APPEAL AND ERROR—Conclusiveness of Findings of Fact.—Where there is uncontradicted evidence supporting the finding of the chancellor on a question of fact, it is conclusive on appeal.—Coleman v. White, Miss., 38 So. Rep. 336.

7. APPEAL AND ERROR — Dismissal. — Where, if the judgment were reversed, plaintiff in error would not be benefited, the writ of error will be dismissed without prejudice.—Garlington v. Davison, Ga., 50 S. E. Rep. 667.

8. APPEAL AND ERROR—Failure to Request Special Charge.—Plaintiff, having failed to request a special charge as to whether a railroad passenger seat was out of repair and was the proximate cause of his injury, could not object to the failure to charge on such issues. —Boyles v. Texas & P. Ry. Co., Tex., 86 S. W. Rep. 936.

9. APPEAL AND ERROR—Fraudulent Deposits.—Plaintiff held not entitled to recover an alleged fraudulent deposit without proof that the proceeds of the deposit came into the hands of the bankers' assignee after insolvency.—Williams v. Van Norden Trust Co., 93 N. Y. Supp. 821.

10. APPEAL AND ERROR—General Verdict on Several Counts.—In view of a general verdict for plaintiff in an action on several counts, held, that it was prejudicial error to refuse to instruct that no recovery could be had on one of them.—Hagar v. Norton, Mass., 73 N. E. Rep. 1073.

11. APPEAL AND ERROR—Reversal.—Where plaintiff submits to a nonsuit and appeals, he must, on reversal, submit to a new trial.—City of Hickory v. Southern Ry. Co., N. Car., 50 S. E. Rep. 683.

12. APPEAL AND ERROR—Review of Findings.—On appeal in equity, where there have been special findings of fact, but no bill of exceptions has been preserved, only such findings will be considered as are embraced within the issues.—Kupke v. Polk, Neb., 103 N. W. Rep. 321.

13. APPEAL AND ERROR—Violating Rules as to Briefs. —Appellate courts are not required to notice matters as to which the parties fail in their briefs to comply sufficiently with the rules of the court.—Peden v. Scott, Ind., 73 N. E. Rep. 1099.

14. APPEARANCE—Rehearing.—In a suit for specific performance, where defendants have been proceeded against as nonresidents, and have appeared, but have made no defense, they are not entitled to a rehearing, after decree taken as confessed on the ground that they were not nonresidents and were not personally served. —Ferrell v. Camden, W. Va., 50 S. E. Rep. 733.

15. ARMY AND NAVY—Court-Martial.—The arrest referred to in Rev. St. U. S., §1624, art. 43, as the time when a copy of the charges on the trial by a naval court-martial is to be furnished, is an arrest resulting from the preferring of the charges by the proper authority.—United States v. Smith, U. S. S. C., 25 Sup. Ct. Rep. 489.

16. ASSAULT AND BATTERY—Evidence.—In a prosecution for beating prosecutor with a stick and intimidating him with a pistol, it was not error to permit the state to ask prosecutor if he was armed.—Tuberville v. State, Miss., 38 So. Rep. 333.

17. ASSUMPSIT, ACTION ON—Contract as Evidence of Amount Due.—In *indebitatus assumpsit* for price of goods sold under special contract, plaintiff held entitled to use contract as evidence of amount due.—Peden v. Scott, Ind., 73 N. E. Rep. 1099.

18. ATTORNEY AND CLIENT—Compromise of Judgment. —An attorney who recovers a judgment, and compromises it for a less sum than its value without authority from its client, held liable to the client for the sum received and any damages sustained.—Burgraf v. Byrnes, Minn., 103 N. W. Rep. 215.

19. BANKRUPTCY—Deposit in Bank —Money deposited in a bank by an insolvent within four months of adjudication in bankruptcy held not a transfer of property, amounting to a preference, within the meaning of Bankr. Act 1898.—Habegger v. First Nat. Bank, Minn. 103 N. W. Rep. 216.

20. BANKRUPTCY—Discharge.—Where a defendant on appeal from a justice pleaded a discharge in bankruptcy, and no judgment was entered against him, his sureties on his appeal bond were not liable.—Lafoon v. Kerner, N. Car., 50 S. E. Rep. 654.

21. BANKRUPTCY—Fraudulent Conveyances.—In an action by a bankrupt's trustee to set aside an alleged fraudulent conveyance of the bankrupt's property, under Bankr. Act, 1898, ch. 541, § 67e, an issue as to the purchaser's good faith, failing to submit as an element the payment of a present, fair consideration, held erroneous.—Piedmont Sav. Bank v. Levy, N. Car., 50 S. E. Rep. 657.

22. BANKRUPTCY — Preferences. — Under Bankr. Act, 1898, ch. 541, § 60, subds. "a," "b," a mere preferential transfer by a bankrupt cannot be avoided, unless the transferee had reasonable cause to believe that a preference was intended.—Galveston Dry Goods Co. v. Frenkel Tex., 86 S. W. Rep. 949.

23. BANKS AND BANKING—Fraud of President.—Where president of a bank engages in litigation in which his individual interests are in conflict with those he represents in a fiduciary capacity, actual fraud is unnecessary to avoid the proceedings.—Gund v. Ballard, Neb., 103 N. W. Rep. 309.

24. BENEFIT SOCIETY — Certificate.— Beneficiaries under a beneficial association certificate, payable to them, respectively, in stated proportions, held improperly joined as parties plaintiff in an action on the certificate.—Conard v. Southern Tier Masonic Relief Assn., 93 N. Y. Supp. 626.

25. BILLS AND NOTES—Accommodation Indorser.—The makers of a note, to whom a notice of protest was sent, to be forwarded to an accommodation indorser, though not entitled to give such notice on their own behalf, under Negotiable Instruments Law, Laws 1897, p. 739, ch. 612, § 161, held entitled to forward the notice as agents for the holder, under section 162.—Traders' Nat. Bank v. Jones, 93 N. Y. Supp. 768.

26. BILLS AND NOTES—Failure of Consideration.—In a suit on a check, where the defense is failure of consideration, the specific facts showing such failure should be set forth.—Grimes v. Erickson, Minn., 103 N. W. Rep. 884.

27. BILLS AND NOTES—Failure of Consideration.— Under Negotiable Instruments Law, Laws 1897, p. 729, ch. 612, § 91, defining a holder in due course, a person taking a note as security for an antecedent debt held a holder for value.—Milius v. Kauffmann, 93 N. Y. Supp. 669.

28. BOUNDARIES—Oral Agreements.—An oral agreement fixing the boundary lines may be enforced in equity, if the parties have recognized the line and treated it as the true division, without a showing that it has been so recognized for 15 years.—Frazier v. Mineral Development Co., Ky., 86 S. W. Rep. 983.

29. BOUNDARIES—Riparian Proprietors.—A patentee from the United States has all the rights of a riparian owner in the channel opposite his banks, though his land is surrounded by two channels of the river.— Whitaker v. McBride, U. S. S. C., 25 Sup. Ct. Rep. 530.

30. BROKERS—Sale of Stock.—A principal who directed his broker to sell stocks at the market price held bound by the sale at a smaller price than that which obtained at the time the order was given.—Fairbairn v. Rausch, 93 N. Y. Supp. 666.

31. BUILDING AND LOAN ASSOCIATIONS—Minimum Premium.—Amount of the minimum premium to be paid by a borrowing member of a building association held sufficiently definite and certain. — Thompson v. National Mut. Building & Loan Assn., W. Va., 50 S. E. Rep. 756.

32. CARRIERS—Collision With Vehicle.—In action for injuries to a passenger, sustained in a collision between the car in which he was riding and a carriage which turned on the track from a country road, the fact of the collision raised no presumption of negligence.—Fagan v. Rhode Island Co., R. I., 60 Atl. Rep. 672.

33. CARRIERS—Defective Seats.—A carrier of passengers is only chargeable with the exercise of a very high degree of care to provide reasonably safe seats.—Boyles v. Texas & P. Ry. Co., Tex., 86 S. W. Rep. 936.

34. CARRIERS—Delay in Transportation.—Consignor held party aggrieved, within Laws 1903, p. 999, ch. 590, § 3, making it unlawful for railroads to neglect to transport goods received and providing penalties for a violation thereof.—Summers v. Southern Ry. Co., N. Car., 50 S. E. Rep. 714.

35. CARRIERS—Injury to Alighting Passenger.—A passenger, injured in getting off a street car, held not guilty of contributory negligence as matter of law, though knowing the condition of the ground.—Senf v. St. Louis & S. Ry. Co., Mo., 86 S. W. Rep. 887.

36. CARRIERS—Injury to Passenger.—After refusal of carrier's ticket agent to sell ticket on next local train, on erroneous ground that a through train was ahead, a subsequent announcement that local had arrived held not to excuse the misinformation.—Coleman v. Soufhern Ry. Co., N. Car., 50 S. E. Rep. 690.

37. CARRIERS—Liability for Injuries to Animals Shipped.—The measure of a carrier's liability for injuries to horses shipped held the difference between the market value at destination in the condition in which the horses arrived, and their market value had they been properly transported.—Texas & P. Ry. Co. v. Stephens, Tex., 86 S. W. Rep. 933.

38. CERTIORARI—Finality of Decree Below.—The lack of finality in a decree reversing an order of a circuit court, granting a preliminary injunction, held not to prevent a review by the supreme court on writ of *certiorari* to circuit court of appeals.—Harriman v. Northern Securities Co., U. S. S. C., 25 Sup. Ct. Rep. 493.

39. COMMERCE—Street Paving.—Interstate commerce held not directly interfered with, so as to contravene the federal constitution or anti-trust law, by designation of a certain kind of asphalt for street paving.—Barber Asphalt Pav. Co. v. Field, Mo , 86 S. W. Rep. 860.

40. CONSTITUTIONAL LAW—Limiting the Hours of Labor.—The limitation of employment in bakeries to sixty hours a week and ten hours a day, under Laws N. Y. 1897, ch. 415, art. 8, § 110, held not an arbitrary interference with the freedom to contract guarantied by Const. U. S. Amend. 14.—Lochner v. People of State of New York, U. S. S. C., 25 Sup. Ct. Rep. 539.

41. CONTEMPT—Conflicting Jurisdictions.—The jailor of C county, who on the advice of the C circuit judge refuses to surrender to the B circuit court, for trial there for a felony, one confined in the C county prison awaiting trial in the C circuit court for a misdemeanor, held not liable to be punished for contempt.—Boone v. Riddle, Ky., 86 S. W. Rep. 978.

42. CONTRACTS—Incapacity to Contract.—Contract entered into by one rendered incompetent to contract through voluntary intoxication held void.—Cameron-Barkley Co. v. Thornton Light & Power Co., N. Car., 50 S. E. Rep. 695.

43. CONTRACTS—In Pari Delicto.—Parties to a transaction adjudged to violate anti-trust act July 2, 1890, ch. 647, 26 Stat. 209, held not exempt from the doctrine *in pari delicto*.—Harriman v. Northern Securities Co., U. S. S. C., 25 Sup. Ct. Rep. 493.

44. CONTRACTS — Rescission. — Where a contract is sought to be rescinded for fraud, it is not necessary for the party seeking rescission to tender back the consideration received before bringing suit.—Tompkins v. Johnson, Tex., 86 S. W. Rep. 958.

45. CORPORATIONS—Application for Receiver by Minority Stockholder.—Where a court of equity can grant sufficient relief to a complaining minority stockholder, who alleges mismanagement by corporate officers, a receiver will not be appointed.—Miller v. Kitchen, Neb., 103 N. W. Rep. 297.

46. CORPORATIONS—Collateral Attack.—The existence of a corporation is subject to collateral attack, when there is no law under which it could become a corporation *de jure*.—Clark v. American Cannel Coal Co., Ind., 73 N. E. Rep. 1083.

47. CORPORATIONS—License and Franchise Tax.—Foreign corporation, owning and managing office building in New York city, held liable to license and franchise tax, under Laws 1896, p. 856, ch. 908, §§ 181, 182.—People v. Miller, N. Y., 73 N. E. Rep. 1102.

48. COSTS—Appeal Taken for Delay.—Where there is no just cause for an appeal, and it is taken for delay only, appellee's motion to affirm the judgment, together with 10 per cent damages thereon, will be sustained.—Ft. Worth & R. G. Ry. Co. v. Hadley & Alvoid, Tex., 86 S. W. Rep. 932.

49. COSTS—Where Defendant is Sued in Wrong County.—Defendants who are sued in the wrong county, held entitled to recover as costs only such reasonable allowance as will compensate them for being compelled to make defense in wrong county.—Prewit v. Wilson, Iowa, 103 N. W. Rep. 365.

50. COUNTIES — Burden of Proof. — Where orders for payment of money issued by a county court are attacked for illegality, the burden of proof is on the plaintiff.—Taylor v. County Court of Braxton County, W. Va., 50 S. E. Rep. 720.

51. COURTS—Conflicting Jurisdictions.—One who, while on bail to appear for trial in the B circuit court for a felony, is confined in the C county prison to await trial for a misdemeanor in the C circuit court, held required to be surrendered for the trial in the B circuit court.—Boone v. Riddle, Ky., 86 S. W. Rep. 978.

52. COURTS—Suit by Foreign State.—A foreign state, bringing a suit or making a claim in the courts of this state, is entitled to no greater consideration, as regards the law of comity, than is an ordinary suitor.—J. A. Holshouser Co. v. Gold Hill Copper Co., N. Car., 50 S. E. Rep. 653.

53. COVENANTS—Covenant of Warranty.—An incumbrance which eventuates in an eviction of the covenantee is a breach of covenant of warranty.—Cain v. Fisher, W. Va., 50 S. E. Rep. 752.

54. CRIMINAL TRIAL—Character of Defendant.—In a criminal cause, the state may not assail the character of a defendant directly, unless he has placed it in issue.—State v. Thompson, Iowa, 103 N. W. Rep. 377.

55. CRIMINAL TRIAL—Cross-Examination.—On a prosecution for murder, held not error to refuse to permit defendant to cross-examine a witness on a certain statement by her.—Posey v. State, Miss., 30 So. Rep. 824.

56. CRIMINAL TRIAL — Discharge on Insufficiency of Proof.—Where defendants were discharged merely on the ground that the proof was insufficient for conviction, the state had no right of appeal.—State v. Willingham, Miss., 38 So. Rep. 334.

57. DAMAGES—Duty to Prove Value of Medical Services.—In a personal injury action, there can be no recovery for medical services, in the absence of proof of their value.—St. Louis Southwestern Ry. Co. of Texas v. Haynes, Tex., 86 S. W. Rep. 934.

58. DEEDS—Incapacity of Grantor.—An inquest adjudging a grantor of unsound mind two years prior to the execution of a deed held to create only a *prima facie* presumption of incapacity, which might be rebutted by parol proof.—Logan v. Vanarsdall, Ky., 86 S. W. Rep. 981.

59. DISTRICT AND PROSECUTING ATTORNEYS—Appeal from Fiscal Court.—When directed by the county court the county attorney is authorized to prosecute an appeal from an order of the fiscal court.—Jefferson County v. Young, Ky., 86 S. W. Rep. 985.

60. EJECTMENT—Limitations.—Action by trustee to determine whether land in possession of defendants was

subject to a trust deed held not a bar, on dismissal, to an action by remainderman against defendants' grantor for possession, required to be brought by Code Civ. Proc. 1902, § 98, subd. 2, within two years from dismissal of the former action.—Martin v. Ragsdale, S. Car., 50 S. E. Rep. 671.

61. ELECTIONS—Defective Marking on Ballots.—Irregular and defective markings on a ballot, apparently the result of innocent awkwardness or ignorance, will not justify the rejection of such ballots.—Bingham v. Broadwell, Neb., 103 N. W. Rep. 323.

62. EMINENT DOMAIN—Streets.—The construction of a street passenger railway does not impose an additional servitude on adjoining property, though in laying out the street a mere easement was taken, and not the fee. —Hester v. Durham Traction Co., N. Car., 50 S. E. Rep. 711.

63. EQUITY—Decree of Pro Confesso.—On reversal of a decree *pro confesso* for an error therein, the defendants are not entitled to file their answers and make defense. —Ferrell v Camden, W. Va., 50 S. E. Rep. 733.

64. EQUITY—Adequacy of Remedy at Law.—Alleged inability of one of two defendants to respond in damages held not to present the question of the inadequacy of the remedy at law in such manner as to sustain the jurisdiction of a court of equity.—Williams v. Mathewson, N. H., 60 Atl. Rep. 687.

65. ESTOPPEL—Construction of Contract.—Assumption by plaintiff of a construction of a contract which the appellate court decides to be erroneous held not to preclude plaintiff on new trial from assuming a position consistent with the construction given the contract by the court.—Chauvet v. Ives, 93 N. Y. Supp. 744.

66. ESTOPPEL—What Constitutes.—That a person may have an equity standing to claim rights against another on the ground of estoppel, he must show that he changed his position, reasonably relying on the conduct of such person.—McDougald v. New Richmond Roller Mills Co., Wis., 103 N. W. Rep. 244.

67. EVIDENCE—Assumption of Risk.—In an action for injuries alleged to have been sustained by the incompetency of a mine boss, opinions of witnesses as to such incompetency are incompetent.—Purkey v. Southern Coal & Transportation Co., W. Va., 50 S. E. Rep. 755.

68. EVIDENCE—Church Records as to Pedigree.—Baptismal church records, kept by a parish priest in Ireland and admissible in the Irish courts on an issue of pedigree, held admissible in Missouri.—Collins v. German-American Mut. Life Assn., Mo., 86 S. W. Rep. 891.

69. EVIDENCE—Indorsement of Note.—The liability of persons signing a note on the back thereof as indorsers cannot be varied by parol evidence.—Harnett v. Holdrege, Neb., 103 N. W. Rep. 277.

70. EVIDENCE—Opinions as to Hand-Writing.—The fact that a witness testifying as to whether certain letters were written by another is not an expert and has enjoyed little business experience goes to the weight of his testimony.—Frank v. Berry, Iowa, 103 N. W. Rep. 358.

71. EXECUTORS AND ADMINISTRATORS—Administrator Purchasing at Sale of Real Estate.—Neither the administrator of an estate nor his attorney may for their personal profit purchase an outstanding life estate in real estate of which the administrator is trustee.—*In re* Robbins' Estate, Minn., 103 N. W. Rep. 217.

72. EXECUTORS AND ADMINISTRATORS—Ancillary Administration.—Administrations of estates of persons dying testate or intestate, granted in another state, held ancillary to administration of domicile.—Appeal of Hopkins, Conn., 60 Atl. Rep. 657.

73. EXECUTORS AND ADMINISTRATORS—Laches in Filing Claim.—Refusal to allow a claim to be filed against the estate of a decedent, where presented more than eight months after the expiration of the time fixed by the court, held proper.—Nebraska Wesleyan University v. Bowen, Neb., 103 N. W. Rep. 275.

74. EXTRADITION—What Constitutes being Charged with Crime.—A person against whom a complaint for a felony has been filed before a committing magistrate held charged with a crime, within Const. U. S. art. 4, § 2, subd. 2, and Rev. St. U. S. § 5278, relating to extradition' —*In re* Strauss, U. S. S. C., 25 Sup. Ct. Rep. 535.

75. FALSE PRETENSES—Procuring Money.—Insurance solicitor, who procured money from state agent on the faith of supposed application for insurance, held subject to conviction for false pretenses, under Code, § 5041. —State v. Seligman, Iowa, 103 N. W. Rep. 357.

76. FEDERAL COURTS—Question—How Raised and Decided.—The supreme court of a state may decline to reopen on a second appeal a question of the validity of a service of summons, which it had upheld on first appeal, without making a case for a writ of error from the Supreme Court of the United States, where the claim that service was invalid under Const. U. S. was raised on second hearing.—Western Electrical Supply Co. v. Abbeville Electric Light & Power Co., U. S. S. C., 25 Sup. Ct. Rep. 451.

77. FIRE INSURANCE—Action Against Foreign Corporation.—A cause of action founded on a loss covered by an insurance policy issued by a foreign corporation held to arise within the state, within the meaning of the provision for service of summons on foreign corporations contained in Code Civ. Proc. N. Y. § 432, subd. 3.—Pennsylvania Lumbermen's Mut. Fire Ins. Co. v. Meyer, U. S. S. C., 25 Sup. Ct. Rep. 483.

78. FIRE INSURANCE—Iron-Safe Clause.—An iron-safe clause in a policy insuring a drug store held not to require insured to lock his books, etc., in an iron safe while temporarily absent from the store during business hours.—Major v. Insurance Co. of North America, Mo., 86 S. W. Rep. 883.

79. FIRE INSURANCE—Waiver of Proofs of Loss.—Failure of insurer to answer telegram held not waiver of proofs of loss required by policy of fire insurance.— Providence Washington Ins. Co. v. Wolf, Ind., 73 N. E. Rep. 1093.

80. FRAUD—Representations as to Quantity of Land.— False representations by vendor as to the quantity of a tract of land are not matters of opinion, and he cannot avoid their consequences because the vendee might have ascertained their falsity by a survey or the official records.—Stearns v. Kennedy, Minn., 103 N. W. Rep. 212.

81. FRAUDS, STATUTE OF—Joinder of Causes of Action. —An agreement for purchase of a farm and hay thereon being void under Rev. St. 1898, § 2304, the statute of frauds, held, damages for the breach of the part thereof as to the hay are not recoverable.—Schultz v. Kosbab, Wis., 103 N. W. Rep. 237.

82. FRAUDS, STATUTE OF—Oral Agreements Affecting Boundary.—An oral agreement fixing the boundary of adjoining lands was not within the statute of frauds, though it resulted in leaving portions of the land of each party in the possession of the other.—Frazier v. Mineral Development Co., Ky., 86 S. W. Rep. 983.

83. GRAND JURY—Increasing Number of Panel.—Where a grand jury of 16 was determined on by the trial judge, and after the impaneling of the jury 2 jurymen were excused, the court had authority to cause the number of the jurymen to be increased to 18.—Posey v. State, Miss., 38 So. Rep. 324.

84. HABEAS CORPUS—Effect of Reversal of Order.—A prisoner, set at liberty by *habeas corpus*, may, on reversal of the order by an appellate court, be remanded to the custody from which he was freed.—State v. Shrader, Neb., 103 N. W. Rep. 276.

85. HOMESTEAD—Rights of Creditors.—If, at the death of the owner of a homestead, the allotment does not exceed the full limit of value allowed, a subsequent appreciation does not give creditors of the deceased a right to subject the excess to their claims —Moody v. Moody, Miss., 38 So. Rep. 322.

86. HOMICIDE—Love Letters as Evidence.—In a prosecution for homicide, love letter written by defendant's brother while in jail to deceased, taken from defendant's possession, held admissible.—Mathley v. Commonwealth, Ky., 86 S. W. Rep. 988.

87. HUSBAND AND WIFE — Conveyances Through Medium of Third Party.—A court of equity will scrutinize with greater care a conveyance of land by a wife to her husband through the medium of a third party than a conveyance through similar means by the husband to the wife.—Hannaford v. Dowdle, Ark., 86 S. W. Rep 818.

88. HUSBAND AND WIFE—Homestead.—When the husband, as the head of his family, sets apart a homestead, it is not essential to the validity of the designation that it be signed by the wife, or, in the absence of fraud, that it be assented to or concurred in by her.—Pickett v. Gleed, Tex., 86 S. W. Rep. 946.

89. HUSBAND AND WIFE—Obligations of Husband.—The common-law liability of a husband to support his wife does not extend to supporting her outside the matrimonial home reasonably chosen by him.—Richardson v. Stuesser, Wis., 103 N. W. Rep. 261.

90. INFANTS—Lien of Attorney.—An order allowing attorneys a fee from the estate of infants whom they represented in certain litigation should not fix a lien on the infant's property for the amount allowed.—Owens v. Gunther, Ark., 86 S. W. Rep. 851.

91. INJUNCTION—Enforcement.—That a person is garnished by different persons on separate demands, or that the same question of law may arise in all the cases, does not give equity jurisdiction to enjoin the suits, to avoid multiplicity of suits.—National Tube Co. v. Smith, W. Va., 50 S. E. Rep. 717.

92. INJUNCTION — Equity's Lack of Jurisdiction.—Where it appears that equity has no jurisdiction to grant the injunction prayed for, held, that court may deny relief, though there is no demurrer, under Burns' Ann. St. 1901, § 342.—McConnell v. Hampton, Ind., 73 N. E. Rep. 1092.

93. INSANE PERSONS—Liability for Support of Wife.—There being no express statute extending the common-law liability of a husband to support his wife, where she has been removed from his home and maintained at an insane asylum, he is not liable under such circumstances.—Richardson v. Stuesser, Wis., 103 N. W. Rep. 261.

94. INTOXICATING LIQUORS—Dealer's Bond. — Under the statute as to liquor dealers' bonds, a bond of two persons engaging in the liquor business held valid, though conditioned only that one of them conform to the statute.—State v. Harper & Crow, Tex., 86 S. W. Rep. 920.

95. JUDGMENT—Joint Tort Feasors.—Where, in an action against joint tort feasors, judgment was rendered against both of them, the court, in setting aside the judgment against one of them, should also dismiss the action as to him.—Weathers v. Kansas City Southern Ry. Co., Mo., 86 S. W. Rep. 908.

96. JUDGMENT—Mortgages. — A judgment foreclosing railroad mortgages under which the property was sold held no bar to a subsequent suit to have the purchaser declared a trustee for the benefit of stockholders.—MacArdell v. Olcott, 93 N. Y. Supp. 759.

97. JUDGMENT—Questions not Determined. — General expressions in an opinion, not essential to the case, cannot control judgment in subsequent suits.—Harriman v. Northern Securities Co., U. S. S. C., 25 Sup. Ct. Rep. 493.

98. JUSTICES OF THE PEACE—Action to Set Aside Judgment.—In an action to set aside a judgment because the summons was issued by one not a justice *de jure* or *de facto*, the complaint held defective, because not declaring that the justice had not been elected at the general election preceding, and had not duly qualified.—Kane v. Arneson Mercantile Co., Minn., 103 N. W. Rep. 218.

99. KIDNAPING—What Constitutes.—Actual detention of a person for any length of time to extort money as the price of liberation held a violation of Acts 29th Gen. Assem., p. 105, ch. 142, punishing kidnaping.—State v. Leuth, Iowa, 103 N. W. Rep. 345.

100. LANDLORD AND TENANT — Adequacy of Legal Remedy.—Tenant who has been dispossessed held to have an adequate remedy at law, and not entitled to proceed in equity to recover possession. — Williams v. Mathewson, N. H., 60 Atl. Rep. 687.

101. LANDLORD AND TENANT—Covenants to Repair.—A tenant, having covenanted to make repairs, held liable for the cost of repairs required by the building department of the city, made by the landlord after the tenant's refusal to make them and surrender of the premises.—Markham v. David Stevenson Brewing Co., 93 N. Y. Supp. 684.

102. LANDLORD AND TENANT — Failure to Repair. — Where premises have been occupied by the same tenants for six years, it is not to be presumed that a defective condition of a window existing at the end of that time existed when the premises were originally let to the tenants.—Hirschfield v. Alsberg, 93 N. Y. Supp. 617.

103. LIBEL AND SLANDER - Matter Libelous per se.—A written publication stating that the subscribers were well acquainted with plaintiff and would not believe him under oath is libelous *per se*.—Prewitt v. Wilson, Iowa, 103 N. W. Rep. 365.

104. LIFE INSURANCE—Right to Paid-Up Policy —The right to a paid-up policy on default in payment of premium held not forfeited for failing to make demand within the time specified in the policy.—Ætna Life Ins. Co. v. Sug, Ky., 86 S. W. Rep. 967.

105. LOGS AND LOGGING—Parol Sale of Standing Timber —A parol sale of standing timber held but a license, which may be revoked, making subsequent acts of the licensee on the land a trespass.—Hodsdon v. Kennett, N. H., 60 Atl. Rep. 686.

106 MANDAMUS—Original Jurisdiction of Circuit Federal Court.—A federal circuit court has no jurisdiction under Act March 3, 1887, ch. 373, 24 Stat. 552, of original proceedings in *mandamus*.—United States v. Lake Shore & M. S. Ry. Co., U. S. S. C., 25 Sup. Ct. Rep. 538.

107. MANTER AND SERVANT—Contract to Give Entire Time.—Plaintiff, having agreed to devote his entire time to his employer's business, was not entitled to give any part of his time to the business of another.—Hughes v. Toledo Scale & Cash Register Co., Mo., 86 S. W. Rep. 895.

108. MASTER AND SERVANT—Contributory Negligence. —In an action by a car repairer against his employer for injuries, whether plaintiff was guilty of contributory negligence held a question for the jury.—Hughes v. Iowa Cent. Ry. Co., Iowa, 103 N. W. Rep. 339.

109. MASTER AND SERVANT—Defective Appliances.- An employee has the right to assume that the master has furnished reasonably safe appliances with which to work.—Hynson v. St. Louis Southwestern Ry. Co., Tex., 86 S. W. Rep. 928.

110. MASTER AND SERVANT—Defective Appliances. — Master's negligence in furnishing appliances excludes the implication of an assumption of risk by employee of defects in the appliances.—Shore v. American Bridge Co. of New York, Mo., 86 S. W. Rep. 905.

111. MASTER AND SERVANT—Defective Turntable.—In an action against a street railway by an employee for personal injuries, recovery on account of displacement of turntable produced by motion of car in crossing held sustainable under the pleadings.—Dutro v. Metropolitan St. Ry. Co., Mo., 86 S. W. Rep. 915.

112. MASTER AND SERVANT—Employee's Liability Act. —That a fellow servant may operate a defective appliance so as not to cause injury does not exempt the master from liability for failing to furnish a safe appliance. —Pluckham v. American Bridge Co., 93 N. Y. Supp. 748.

113. MASTER AND SERVANT — Hospital Benefits.—An employee, permitting a deduction of his wages under an agreement for hospital benefits, held not bound by subsequently enacted rules limiting the time of treatment and the injuries for which treatment would be given.—Scanlon v. Galveston, H. & S. A. Ry. Co., Tex., 86 S. W. Rep. 930.

114. MASTER AND SERVANT—Independent Contractor. —Contractor doing grading for a railroad under direction of chief engineer held not an independent con-

tractor, but the servant of the railroad.—Parrott v. Chicago Great Western Ry. Co., Iowa, 103 N. W. Rep. 352.

115. MASTER AND SERVANT—Sufficiency of Complaint.—Statements in a complaint in an action for personal injuries that an employee was engaged in doing certain acts in the performance of his duty, and was without fault, repel the inference of contributory negligence.—Pope v. Great Northern Ry. Co., Minn., 103 N. W. Rep. 331.

116. MECHANICS' LIENS—Lienable Articles.—Gas appliances held not fixtures, nor lienable articles, in the absence of evidence of an intention to make them a permanent part of the realty.—Frank Adam Electic Co. v. Gottlieb, Mo., 86 S. W. Rep. 901.

117. MINES AND MINERALS—Oil Lease Construed.—A provision in an oil lease for completion of a specified number of wells, if oil should be found in paying quantities, construed, and the meaning of the phrase "paying quantities" determined.—Manhattan Oil Co. v. Carrell, Ind., 73 N. E. Rep. 1084.

118. MONEY RECEIVED—Undue Influence.—An administrator held not entitled to maintain an action for money had and received by one who had obtained certain stock certificates from the intestate.—Hagar v. Norton, Mass., 73 N. E. Rep. 1073.

119. MONOPOLIES—Prohibition of Trusts.—Act April 19, 1898 (93 Ohio Laws, p. 143), defining "trusts" and prohibiting them under penalties, is a valid exercise of the police power.—State v. Gage, Ohio, 73 N. E. Rep. 1078.

120. MORTGAGES—Conformity of Judgment in an Agreed Case.—Under an agreed case, judgment for plaintiff should have expressly declared that his ownership was subject to defendant's rights under a mortgage.—Langmaack v. Keith, S. Dak., 103 N. W. Rep. 210.

121. MORTGAGES—Debts Secured.—A note given for interest earned on a prior note secured by a mortgage is also secured by the martgage, and the holder may foreclose the mortgage to enforce its payment.—Kleis v. McGrath, Iowa, 103 N. W. Rep. 371.

122. MORTGAGES—Security Deed.—The transferee of a note secured by deed can, after judgment, obtain a special lien on the land, by having the holder of the legal title execute a conveyance to the judgment debtor, to have the land sold under the execution and then levying his execution thereon.—Maddox v. Arthur, Ga., 50 S. E. Rep. 668.

123. MUNICIPAL CORPORATIONS—Assessment for Street Improvement.—Proof of the inequitable character of a special assessment for street improvement does not establish fraud.—Owens v. City of Marion, Iowa, 103 N. W. Rep. 381.

124. MUNICIPAL CORPORATIONS—Destruction of Shade Trees by Escape of Gas.—Owner of residence property, abutting on a city street in which he had no interest, held entitled to recover for destruction of shade trees by escape of gas from mains in the street.—Donahue v. Keystone Gas Co., N. Y., 73 N. E. Rep. 1108.

125. MUNICIPAL CORPORATIONS—Injury to Car Employee.—Whether a street car conductor, injured by coming in contact with planks used in shoring up a sewer in the street, was guilty of contributory negligence, held a question for the jury.—Nichols v. City of New Rochelle, 93 N. Y. Supp. 796.

126. NEGLIGENCE—Controller Box on Electric Car.—Where the controller box on an electric car was charged with electricity to such an extent as to endanger the safety of passengers who might accidentally touch it, an inference of negligence was warranted.—South Covington & C. St. Ry. Co. v. Smith, Ky., 86 S. W. Rep. 970.

127. NEGLIGENCE—Imputed Negligence.—Negligence of an engineer of a freight train, the proximate cause of a collision, held not imputable to the conductor, who was killed therein.—St. Louis & S. F. R. Co. v. McFall, Ark., 86 S. W. Rep. 824.

128. PARENT AND CHILD—Child's Estate.—Where a mother and infant lived together, held, that the fact that the infant's land was used for the family support should be considered in estimating the amount of board which the mother was to be allowed to charge the infant.—Commonwealth v. Lee, Ky., 86 S. W. Rep. 990.

129. PARENT AND CHILD—Right to Custody of Child.—The right of a parent to the custody of a minor child of tender years should not be set aside, where unfitness is not affirmatively shown or a forfeiture of such right clearly established.—Terry v. Johnson, Neb., 103 N. W. Rep. 319.

130. PARTNERSHIP—Authority of Partner to Lease Premises.—A partner in the newspaper publishing business has *prima facie* authority to lease premises in which to conduct the business.—Woolsey v. Henke, Wis., 103 N. W. Rep. 267.

131. PARTNERSHIP—Surviving Partner.—The relation of a surviving partner to the representative of a deceased partner is a fiduciary relation, which prohibits the former from acquiring any benefit at the expense of the latter.—Bauchle v. Smylie, 93 N. Y. Supp. 709.

132. PHYSICIANS AND SURGEONS—X-Ray Burns as Evidence of Malpractice.—That plaintiff was severely burned by X-rays while being treated by defendant for appendicitis was of itself evidence that the treatment was improper.—Shockley v. Tucker, Iowa, 103 N. W. Rep. 360.

133. PRINCIPAL AND AGENT—Authority of Agent to Alter Contract.—Any understanding between seller of horse and special agent of buyer, sent to get the horse, relative to the contract, held not binding on the purchaser.—Schenck v. Griffith, Ark., 86 S. W. Rep. 850.

134. PRINCIPAL AND AGENT—Authority to Mortgage Property.—Authority in an agent to sell property and collect the price does not give him authority to mortgage the property.—Wycoff, Seaman & Benedict v. Davis, Iowa, 103 N. W. Rep. 349.

135. PRINCIPAL AND SURETY—Discharge of Surety.—A separate defense to a surety's liability for breach of a charter party, that the owner did not use proper diligence to recharter the steamer, held insufficient as a complete defense.—Michigan S. S. Co. v. American Bonding Co. of Baltimore, 93 N. Y. Supp. 805.

136. PRINCIPAL AND SURETY—Liability of Bank President.—Where president of bank secured assignment by firm in debt to bank to himself, held, his liability to the bank was not that of a mere surety, but, as between him and the bank, his obligation was primary in its character.—Gund v. Ballard, Neb., 103 N. W. Rep. 309.

137. PUBLIC LANDS—Clerical Errors.—A call in a patent held a clerical error, and should be excluded in determining the land included.—Witt v. Middleton, Ky., 86 S. W. Rep. 968.

138. RAILROADS—Injuries to Animals on Track.—The employees in charge of a train on discovering an unattended team approaching the track must exercise ordinary care to stop the train.—O'Leary v. Chicago, R. & P. Ry. Co., Iowa, 103 N. W. Rep. 362.

139. RAILROADS—Injuries to Pedestrian Caused by Defective Walk.—Railroad held not liable for injuries to a pedestrian on street on which tracks were laid, caused by defective crosswalk alongside the track.—Ross v. Metropolitan St. Ry. Co., 93 N. Y. Supp. 679.

140. RAILROADS—Materialmen's Lien.—One who furnishes to a railroad or to its contractor material used in the construction of the railroad has a lien on the road.—Ozark & C. Cent. Ry. Co. v. Moran Bolt & Nut Mfg. Co., Ark., 86 S. W. Rep. 848.

141. REMOVAL OF CAUSES—Diverse Citizenship.—The state court has no jurisdiction to try an issue of fact raised on the petition for removal of a cause from a state court to a federal court.—Texarkana Telephone Co. v. Bridges, Ark., 86 S. W. Rep. 841.

142. SALES—Offer and Acceptance.—Where an order was given to a traveling salesman for the purchase of an article, held that the buyer could cancel the order at any time before notice of its acceptance.—L. A. Becker Co. v. Alvey, Ky., 86 S. W. Rep. 974.

143. SCHOOLS AND SCHOOL DISTRICTS—Restraining Sale of Text Books.—A taxpayer held entitled to sue to restrain school directors from making payments und er

the contract in relation to the sale of text books not in conformity with Code, § 2824.—Ries v. Hemmer, Iowa, 103 N. W. Rep. 346.

144. SPECIFIC PERFORMANCE—Contract for the Sale of Land.—Specific performance of a contract for the sale of land will not be refused merely because it does not affirmatively appear that the vendor's wife is willing to join in the conveyance.—Campbell v. Beard, W. Va., 50 S. E. Rep. 747.

145. STATUTES—Presumption as to Regularity of Enactment.—It will not be presumed, from the mere silence of legislative journals, that the legislature disregarded a constitutional requirement in passing a statute.—Waterman v. Hawkins, Ark., 86 S. W. Rep. 844.

146. STREET RAILROADS—Collision with Buggy.—In an action for injuries by collision between plaintiff's buggy and a street car, an offer to show whether the car was running slow or fast held objectionable for indefiniteness.—Lindgren v. Omaha St. Ry. Co., Neb., 103 N. W. Rep. 307.

147. STREET RAILROADS—Injury to Horse in Street.—A street railway company held liable for the negligent killing by a car of a horse wrongfully in the street.—Laronde v. Boston & M. R. R., N. H., 60 Atl. Rep. 684.

148. STREET RAILROADS—Rights of Abutting Property Owners.—The construction of a diamond switch by a street railway company held not a material obstruction to the public use of the street, nor with plaintiff's enjoyment of his abutting property.—Rosenbaum v. Meridian Light & Ry. Co., Miss., 38 So. Rep. 321.

149. TAXATION—Duty of Assessor.—A taxpayer held not entitled to maintain suit to restrain the county assessor from placing on the tax duplicate assessments for omitted property.—McConnell v. Hampton, Ind., 73 N. E. Rep. 1092.

150. TAXATION—Failure to Record Tax Deed.—If a purchaser at a tax sale fails to record his deed until after record of sheriff's deed to a purchaser at judicial sale without notice, he loses whatever title he may have acquired from the tax sale.—Maddox v. Arthur, Ga., 50 S. E. Rep. 668.

151. TAXATION—Period of Redemption in Tax Sale.—Failure to give notice of the expiration of the period of redemption to the owner in possession of lots sold for taxes vitiated the tax deed.—Foy v. Houstman, Iowa, 103 N. W. Rep. 369.

152. TAXATION—Succession Tax.—Executors of estate liable to the succession tax held bound to perform an order directing an appraisement, though a provision of the will directed them not to make returns of testator's property.—*In re* Morris' Estate, N. Car., 50 S. E. Rep. 682.

153. TRIAL—Discretion in Reopening Case for Further Evidence.—In an equity case it was within the discretion of the court to allow the cause to be opened and further evidence to be introduced after the cause had been formally closed.—Winn v. Itzel, Wis., 103 N. W. Rep 220.

154. TRIAL—Failure to Object to Photograph of Letter.—Where a photograph of a letter was offered and admitted in evidence without objection that it was secondary evidence, the objection that it was secondary evidence could only be raised by a motion to strike.—Frank v. Berry, Iowa, 103 N. W. Rep. 355.

155. TRIAL—Stating the Issues.—Failure of the court, in stating the issues in the preliminary portion of its charge, to state all the issues, is not reversible error.—Boyles v. Texas & P. Ry. Co., Tex., 86 S. W. Rep. 936.

156. TROVER AND CONVERSION — Value of Converted Stock.—The measure of damages for the conversion of corporate stock is the fair market value of the stock at the time of the conversion.—Hagar v. Norton, Mass., 73 N. E. Rep. 1073.

157. TRUSTS—Express Trust—Where a purchaser of land at a judicial sale is required to convey the land to the debtor as having purchased it in trust for him, it is error to require the conveyance to be "with covenants of general warranty."—Hatfield v. Allison, W. Va., 50 S. E. Rep. 729.

158. TRUSTS—Husband and Wife.—Liability of husband, constructive trustee of wife for proceeds of land standing in his own name, conveyed to him by the wife, determined.—Huffman v. Huffman, Ind., 73 N. E. Rep. 1076.

159. TRUSTS—Trustee Ex Maleficio.—Where legatee knows that a testator, in leaving him a devise, intends it to be applied for the benefit of another, he will be held as trustee.—Smullin v. Wharton, Neb., 103 N. W. Rep. 288.

160. USURY—Fraud on Bank.—The president and director of a bank cannot contract with it to pay a usurious rate of interest on money owing by him to it, and thereby escape payment of all interest on such debt, under the statute denouncing usury.—Gund v. Ballard, Neb., 103 N. W. Rep. 309.

161. VENDOR AND PURCHASER — Defective Title. — A vendor under a warranty deed, who had not been evicted, was not entitled to defend an action for the price, in the absence of fraud, insolvency, or nonresidence of his grantors, on the ground that the title conveyed was defective.—Joiner v. Trail, Ky., 86 S. W. Rep. 980.

162. VENDOR AND PURCHASER—Recovery of Money.—Vendee in executory contract for sale of real estate, by repudiating contract before time for performance by vendor, held barred from recovering earnest money paid.—Woodman v. Blue Grass Land Co., Wis., 103 N. W. Rep. 236.

163. VENDOR AND PURCHASER—Sale of Real Estate.—A contract for the sale of real estate construed, and held, that the second payment refered to therein was the first installment of the price, less a deposit made to secure performance.—Moling v. Mahon, Tex., 86 S. W. Rep. 936.

164. WAREHOUSEMEN—Duty to Remove Goods to Safe Place.—Warehouseman held bound to exercise reasonable care to remove goods to a place of safety, so as to protect them from an impending flood, threatening the warehouse.—Laurence L. Prince & Co. v. St. Louis Cotton Compress Co., Mo., 86 S. W. Rep. 873.

165. WILLS—Construction.—Will devising the residue of testator's estate to his wife, with power of sale, held to authorize her to convey testator's real estate in fee.—Parks v. Robinson, N. Car., 50 S. E. Rep. 649.

166. WILLS—Construction.—Words in a will cannot be ignored, nor can words be interpolated, unless it appears more probable that testator's intention will thus be more clearly expressed.—Paul v. Philbrick, N. H., 60 Atl. Rep. 682.

167. WILLS—Contest.—On a will contest, declarations of testator indicating constraint in certain acts of his were not competent on the issue of undue influence, but only competent on the issue of unsoundness of mind.—Westfall v. Wait, Ind., 73 N. E. Rep. 1089.

168. WILLS—Scope of Bequest of Household Goods.—Bequest of household goods and effects held to convey to the legatee only the household effects, and not personal property generally, not otherwise disposed of.—Gallagher v. McKeague, Wis., 103 N. W. Rep. 233.

169. WITNESSES—Cross Examination.—In a prosecution for assault with intent to murder, a question to accused held subject to objection as not proper cross-examination and immaterial.—State v. Thompson, Iowa, 103 N. W. Rep. 377.

170. WITNESSES—Cross-Examination.—Ordinarily the cross-examination of a witness is to be confined to matters brought out on the direct examination, but in case the witness is also a party to the action a somewhat broader range is allowed.—Winn v. Itzel, Wis., 103 N. W. Rep. 220.

171. WITNESSES—Husband and Wife.—A husband or wife can testify concerning contracts and transactions between them, where they may do so without breach of the confidential relations.—Hannaford v. Dowdle, Ark., 86 S. W. Rep. 818.